



**FILED**  
6-02-16  
04:59 PM

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the  
Commission's Own Motion into the Rates,  
Operations, Practices, Services and Facilities  
of Southern California Edison Company and  
San Diego Gas and Electric Company  
Associated with the San Onofre Nuclear  
Generating Station Units 2 and 3.

Investigation 12-10-013  
(Filed October 25, 2012)

And Related Matters.

Application 13-01-016  
Application 13-03-005  
Application 13-03-013  
Application 13-03-014

**RESPONSE OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) TO JOINT  
RULING OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE  
REOPENING RECORD, IMPOSING *EX PARTE* CONTACT BAN, CONSOLIDATING  
ADVICE LETTERS, AND SETTING BRIEFING SCHEDULE**

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Dated: June 2, 2016

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Pursuant to the Joint Ruling of Assigned Commissioner and Administrative Law Judge Reopening Record, Imposing *Ex Parte* Contact Ban, Consolidating Advice Letters, and Setting Briefing Schedule (May 9, 2016) (“Joint Ruling”), Southern California Edison Company (“SCE”) respectfully submits this Summary of Settlement Agreement implementation.

## **I. Executive Summary**

When the Commission approved the Amended Settlement Agreement in this proceeding, it estimated that SCE’s customers would pay \$2.5 billion (present value) in rates under the settlement, which is \$1.2 billion (present value) less than SCE was seeking in this proceeding. Since the Commission approved the settlement, SCE has obtained a recovery from its insurance carrier, has obtained funds from the Nuclear Decommissioning Trust, and has taken other actions that have further reduced the amount that customers will pay under the settlement to \$2 billion (present value). This amount will be reduced yet further to the extent SCE is successful in obtaining a recovery from Mitsubishi and from selling nuclear fuel.

SCE has provided or will provide refunds and rate reductions of nearly \$1.6 billion under the settlement, again before any recoveries from Mitsubishi or nuclear fuel sales.

### **A. Background on SONGS and Events Leading to the OII Settlement**

San Onofre Nuclear Generating Station (“SONGS”) Unit 2 began commercial operation in 1983, and Unit 3 began commercial operation in 1984. Units 2 & 3 operated under licenses issued by the Nuclear Regulatory Commission (“NRC”),<sup>1</sup> which were scheduled to expire in 2022. The Commission approved the construction of SONGS Units 2 & 3 and periodically approved subsequent SONGS additional investments and ongoing operations and maintenance (“O&M”) costs. In so doing, the Commission determined that these costs were reasonable.

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<sup>1</sup> Attached hereto as Appendix 1 is a glossary of defined terms.

Under long-standing regulatory policy, a utility that builds a power plant like SONGS to serve its customers' needs is provided an opportunity to recover, through rates charged to customers, its reasonable investment costs plus a reasonable rate of return.<sup>2</sup> This policy helps keep electric rates low and stable by ensuring that customers pay only for the original cost of the plant, even if market prices rise and even if the plant operates longer than originally anticipated. By the same token, this same long-standing regulatory policy holds that customers will reimburse the utility for its reasonable investments in a plant, even if that plant shuts down before the end of its anticipated useful life.<sup>3</sup>

Steam generators are key components of nuclear power plants. Many pressurized water reactor nuclear plants in the U.S. have replaced their original steam generators due to corrosion and wear in the metal alloy used in the original generation of steam generators. In the early 2000s, faced with a similar degradation of the SONGS original steam generators, SCE proposed the Steam Generator Replacement Project ("SGRP") to extend the useful life of SONGS Units 2 and 3. The Commission authorized the SGRP in 2005.<sup>4</sup> SCE thereafter selected Mitsubishi

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<sup>2</sup> See, e.g., D.12-11-051, 2012 WL 6641483 (Nov. 29, 2012); *accord* D.12-12-040 at 7, 2012 WL 7188899 (Cal. P.U.C. Dec. 20, 2012) ("It is consistent with cost of service ratemaking policy and practice to lawfully allow utilities to charge customers the cost of providing service.").

<sup>3</sup> D.12-11-051 at 651-53, 2012 WL 6641483 (authorizing SCE's recovery of remaining investments at Mohave Generating Station and in electromechanical metering equipment); D.11-09-017, 2011 WL 4425407 (Cal. P.U.C. Sept. 8, 2011) (authorizing recovery of water facility that had been shut down after being cited for water quality violations); D.11-05-018, 2011 WL 1903756 (Cal. P.U.C. May 5, 2011) (authorizing PG&E to recover investment in electromechanical metering equipment); D.85-08-046, 1985 WL 1205472 (Cal. P.U.C. Aug. 21, 1985) (authorizing PG&E to recover remaining investment in Humboldt Bay, and stating that "[i]n the case of a premature retirement, the ratepayer typically still pays for all of the plant's direct cost even though the plant did not operate as long as was expected"); D.85-12-108, 1985 WL 1204314 (Cal. P.U.C. Dec. 20, 1985) (authorizing SDG&E to recover investments in prematurely retired plant); D.92-12-057, 1992 WL 438010 (Cal. P.U.C. Dec. 16, 1992) (authorizing PG&E to recover investments in Geysers plant).

<sup>4</sup> D.05-12-040, 2005 WL 3540902 (Cal. P.U.C. Dec. 15, 2005).

through a competitive solicitation to design and fabricate the replacement steam generators (“RSGs”), which were put into service in 2010 and 2011.<sup>5</sup>

On January 31, 2012, operators detected a radiation leak in one of the Unit 3 RSGs and executed a safe shutdown of the unit. Unit 2 was in a refueling outage at that time. Both units remained out of service pending further investigation of the nature and causes of the tube leak and wear. Extensive investigation revealed that errors made by Mitsubishi—in particular, errors embedded in its proprietary computer codes that it used to model the thermal-hydraulic conditions, vibration, and wear inside the steam generators—led to the tube wear that led to the tube leak.<sup>6</sup>

In October 2012, SCE submitted a plan to the NRC to restart Unit 2 at reduced power, which SCE demonstrated would prevent the extreme thermal-hydraulic conditions that led to the tube vibration, wear, and failure. The NRC referred SCE’s proposed restart plan to the Atomic Safety and Licensing Board, which ultimately concluded that SCE would need to obtain a license amendment to operate at reduced power. This license amendment process was likely to have

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<sup>5</sup> D.14-11-040 at 7, 2014 WL 6791600 (Cal. P.U.C. Nov. 20, 2014).

<sup>6</sup> As the NRC noted, “Mitsubishi also found that its design models had not appropriately calculated the secondary side flow conditions for the design configuration of the San Onofre steam generators. As a result, there was significantly less margin to fluid-elastic instability in the actual steam generators than anticipated by the models.” Review of Lessons Learned From the San Onofre Steam Generator Tube Degradation Event (Mar. 6, 2015) at 25, available at <http://www.nrc.gov/docs/ML1501/ML15015A419.pdf>. The NRC also found: “It was determined during the Augmented Inspection Team inspections in March 2012 that the SCE steam generators were under-designed in regard to margin to vibration and that the lack of margin was largely due to under-prediction of gap velocity and void fraction by the Mitsubishi FIT-III code analysis ... [t]he inadequate thermal-hydraulic and flow-induced vibration design resulted in adverse flow conditions, along with insufficient tube support, which caused fluid-elastic instability of a group of tubes in both Unit 3 replacement steam generators. This resulted in one tube leaking and required operator response to rapidly shut down Unit 3 on January 31, 2012.” NRC Confirmatory Action Letter Response Inspection 05000361/2012009 and 05000362/2012009 Letter (Sept. 20, 2013) at 21, 28, available at <http://www.nrc.gov/docs/ML1326/ML13263A271.pdf>.

lasted for an extended time period, with an uncertain outcome. Meanwhile, Mitsubishi had been unable to develop a plan to put the thermal-hydraulic conditions within the envelope of industry operating experience. Instead, Mitsubishi proposed a repair that involved insertion of additional tube supports but failed to demonstrate that this repair would resolve the root cause of the problem, would not lead to new problems, would restore the Units to full power for their 40-year design, and would be approved by the NRC.

Faced with mounting costs to maintain SONGS in a state of readiness for restart, and the prospect of substantial additional delay before the NRC would act on SCE's restart proposal, SCE concluded that a shutdown of SONGS was the most prudent and least-cost course of action for its customers. On June 7, 2013, after nearly 30 years of safe operation, SCE announced that it would permanently shut down SONGS Units 2 & 3. Later that year, SCE commenced an arbitration against Mitsubishi, in which it seeks to recover the damages caused by Mitsubishi's defective steam generators. SCE also pursued claims against Nuclear Electric Insurance Limited ("NEIL"), a nuclear industry insurer that provided insurance to the plant and the rest of the nuclear industry under standard policies.

The Commission initiated this proceeding on October 25, 2012, for the purpose of investigating the actions and expenses of SCE and San Diego Gas & Electric Company ("SDG&E"), a co-owner of the plant, associated with the SONGS outages caused by the defective steam generators and the associated plant closure. On April 3, 2014, SCE, SDG&E, The Utility Reform Network ("TURN"), the Office of Ratepayer Advocates ("ORA"), Friends of the Earth, and the California Coalition of Utility Employees filed a joint motion for adoption of a proposed settlement of this proceeding.

In support of the settlement, the parties presented a comparison of the Present Value of Revenue Requirement (“PVRR”) between the settlement and the parties’ litigation positions. PVRR refers to the funds to be recovered in rates over time, expressed in constant dollars by application of a discount rate. In other words, PVRR is the present value of amounts customers would pay in future rates. The settling parties agreed that PVRR was the appropriate way to value the parties’ litigation positions and the settlement, as it reflected the amounts that customers would pay in rates under the settlement and litigation scenarios. The settlement was projected to yield a PVRR of \$2.5 billion,<sup>7</sup> which is \$1.2 billion less than the PVRR of the rates that SCE was seeking in this proceeding.

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<sup>7</sup> Throughout this pleading, figures are rounded and are therefore approximate.

SONGS 2&3  
Millions of Dollars  
Present Value of Revenue Requirements

	SCE			
	TURN Litigation	ORA Litigation	Settlement	SCE Litigation
<b>PVRR @ 10.00%</b>	<b>\$2,061</b>	<b>\$1,923</b>	<b>\$2,537</b>	<b>\$3,693</b>
<b>Components</b>				
RSG	—	86	—	696
Base Plant	900	708	1,056	1,416
O&M	659	627	704	773
Nuclear Fuel	419	419	389	419
Replacement Power <sup>1</sup>	83	83	389	389
<b>Return (% 2013)</b>				
RSG	0.00%	0.00%	0.00%	5.54%
Debt	0.00%	0.00%	0.00%	5.49%
Preferred	0.00%	0.00%	0.00%	5.79%
Equity	0.00%	0.00%	0.00%	5.54%
<b>Base Plant - Required<sup>2,3,4</sup></b>	<b>0.00%</b>	<b>0.00%</b>	<b>2.62%</b>	<b>7.90%</b>
Debt	0.00%	0.00%	5.49%	5.49%
Preferred	0.00%	0.00%	2.90%	5.79%
Equity	0.00%	0.00%	0.00%	10.45%
<b>Base Plant - Not Required<sup>4</sup></b>	<b>0.00%</b>	<b>0.00%</b>	<b>n/a</b>	<b>5.54%</b>
Debt	0.00%	0.00%	n/a	5.49%
Preferred	0.00%	0.00%	n/a	5.79%
Equity	0.00%	0.00%	n/a	5.54%

1. Does not include foregone sales

2. In Settlement Agreement, Non-RSG plant is not distinguished as "required" or "not-required" as defined in the SCE litigation position. As such, Base Plant, CWIP and M&S earns the rate of return shown in the table.

3. In SCE litigation position, higher return on "required" plant only applicable through 2017. Thereafter, rate of return on "not-required" plant applies

4. Base Plant includes CWIP & M&S.

Source: SCE-56.<sup>8</sup>

<sup>8</sup> In connection with the preparation of this filing, SCE identified an error in Exhibit SCE-56. The estimated PVRR for O&M of \$704 million for the settlement includes a full 12 months of O&M expense in 2012 (\$303 million). Because the settlement addresses recovery of costs starting February 1, 2012, however, only 11 months of O&M expense from 2012 should be included in the estimated PVRR for the settlement. While the version of the PVRR submitted in connection with the motion for settlement approval correctly included only 11 months of O&M for 2012, SCE-56 inadvertently included 12 months and thereby overstated the PVRR of the settlement by \$18 million. This error had no impact on customer rates. SCE is filing concurrently herewith a motion to correct SCE-56. The correction to SCE-56 is reflected in Table 2 below.

In D.14-11-040 at 2, the Commission referred to a settlement PVRR for both SCE and SDG&E of \$3.3 billion, compared to \$1.45 billion allocated to SCE's and SDG&E's shareholders. All figures in this document are for SCE alone. SDG&E will be filing its own response.

On September 5, 2014, the assigned Commissioner and Administrative Law Judges (“ALJs”) issued a ruling requesting modifications to the proposed settlement.<sup>9</sup> Following the settling parties’ acceptance of those proposed modifications, in November 2014, the Commission unanimously approved the Amended Settlement Agreement, finding that it reasonably resolves the issues in this proceeding, is lawful, and is in the public interest.<sup>10</sup>

**B. Summary of Key Elements of OII Settlement**

The Amended Settlement Agreement allocates three broad categories of costs between SCE and its customers, which necessarily had to be addressed in light of the SONGS outages and the resulting permanent retirement of SONGS.

First, the settlement bars SCE from recovering from customers any of the costs of the steam generator replacement project starting as of February 1, 2012, the day after the outages began. In SCE’s case, this resulted in a disallowance of \$597 million. Because SCE was prohibited from collecting in rates both that investment balance as well as any return on that investment, the PVRR loss resulting from that disallowance was \$696 million.<sup>11</sup> The settlement further bars SCE from recovering in rates \$99 million in O&M costs it incurred in 2012 to respond to the outages and to attempt to restore the units to service. All of these costs were paid by SCE’s shareholders.

Second, the settlement provides for customers to pay the costs of power that SCE purchased on the market and that SCE’s customers consumed. These are “replacement power

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<sup>9</sup> Assigned Commissioner and Administrative Law Judges’ Ruling Requesting Settling Parties to Adopt Modifications to Proposed Settlement Agreement (Sept. 5, 2014) (“September 5, 2014 Ruling”).

<sup>10</sup> D.14-11-040 at 135 (Conclusion of Law 7).

<sup>11</sup> SCE-56, row 2 (RSG), last column.



costs” —the costs of power purchased to replace the lost output from SONGS. At the time the Commission approved the settlement, these replacement power costs were estimated to total \$389 million.<sup>12</sup> SCE subsequently reduced this cost for customers by obtaining an insurance settlement from NEIL. Under the settlement, 95% of the net amount recovered from NEIL is credited to customers. The Commission recently approved SCE’s request to credit its customers \$293 million for the NEIL recovery.<sup>13</sup>

Third, the settlement provides for SCE to recover its remaining SONGS costs, other than the costs of the failed RSGs. These other costs include the recovery of SCE’s capital investments made in SONGS over many years, along with the associated O&M costs of SONGS through 2013. The settlement imposes a substantially reduced rate of return on the remaining investment in SONGS, from the 7.9% the Commission has authorized for all of SCE’s other assets, to a settlement rate of return of 2.62% today. The Commission estimated that this reduced rate of return saves customers \$420 million over the ten-year period for amortization of those investments.<sup>14</sup> This return reduces SCE’s future rates and hence is part of the PVRR reduction discussed above.

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<sup>12</sup> SCE-56, row 6 (Replacement Power). This figure refers to market costs of energy and capacity from February 1, 2012, through June 30, 2013, as reported in this proceeding. Prior to the approval of the settlement, in the Energy Resource Recovery Account (“ERRA”) proceeding, the Commission had deferred a decision on the recovery of \$462 million of costs that the Commission deemed to represent the market costs of the SONGS outages in 2013 (including foregone sales). The \$462 million figure addresses market costs for 2013 (a different time period) and includes different costs (foregone sales) than the February 1, 2012, through June 1, 2013, period covered by the \$389 million addressed in SCE-56.

<sup>13</sup> NEIL paid \$400 million in total. SCE’s 80% share was \$313 million. SCE’s customers’ 95% share of that amount, after deducting litigation costs, is \$293 million.

<sup>14</sup> D.14-11-040 at 2-3.

At the time the Commission approved the settlement, it was estimated to yield in total a PVRR for SCE's customers that was \$1.2 billion (net present value) less than the PVRR SCE was seeking in this proceeding.<sup>15</sup> That estimated settlement PVRR, however, did not include any additional customer refunds or credits resulting from SCE's future actions, such as claims against third parties and the sale of SONGS nuclear fuel and spare parts.

The settlement allocates to SCE's customers the cost of capital investments in SONGS (excluding the SGRP post the date the tube leak began), the cost of nuclear fuel purchased in anticipation of future operations, net of salvage proceeds, and O&M costs. These are ordinary categories of costs, which SCE prudently incurred on behalf of customers. The allocation of these costs to customers follows long-standing Commission precedent, which, as noted above, provides that utilities may recover costs the Commission has determined were reasonable and prudent, even when a plant shuts down prior to the end of its anticipated useful life.<sup>16</sup> Both ORA and TURN and the other parties to the settlement accepted this principle in the proceeding and in the settlement.

### **C. Implementation of the Settlement**

The settlement has been and is being implemented as intended. Its benefits are even greater than estimated at the time the settlement was entered into by the settling parties and the Commission approved it. Additional benefits are anticipated, and SCE anticipates that by the end of the year, approximately 45 percent of the regulatory assets allocated to its customers under the settlement will remain to be recovered.

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<sup>15</sup> SCE-56.

<sup>16</sup> See footnotes 2 and 3, above.

## 1. Refunds and Credits

In the 18 months since the Commission approved the settlement, SCE has taken a number of actions to implement the settlement and to reduce customer costs, which are summarized in the following table. In total, SCE has reduced on-going rates, refunded, or will refund nearly **\$1.6 billion** under the Amended Settlement Agreement. This rate reduction is significantly larger than was originally estimated, as a result of a number of recoveries from third parties and other cost offsets that were not included in the estimates prepared when the settlement was approved. While some of these recoveries and offsets do not result directly from the settlement, they reduce the amount that SCE's customers will pay in future rates. Importantly, the \$1.6 billion figure does not include other sources of funds, such as recoveries from Mitsubishi, which may further reduce customers' rates in the future; these potential additional sources are discussed below.

**Table 1:** Summary of SONGS Settlement Rate Reductions

	<b>Description</b>	<b>Rate Reduction (in millions)</b>
1.	Refund for February 1, 2012 – December 31, 2014	\$506
2.	Reduction in SONGS Revenue Requirement for 2015	\$429
3.	Nuclear Decommissioning Trust ("NDT") Credit	\$282
4.	NEIL Settlement Net Proceeds	\$293
5.	DOE Settlement Net Proceeds	\$72
6.	Other SONGS Settlement Proceeds & Expenditures	(\$12)
	<b>Total Reduction</b>	<b>\$1,570<sup>17</sup></b>

These reductions, which are more fully explained below, are summarized as follows:

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<sup>17</sup> Excludes recovery of replacement power costs. In the 2015 ERRA Forecast proceeding, SCE requested and the Commission authorized recovery of the \$462 million in 2013 market costs that the Commission had deferred. Pursuant to the Amended Settlement Agreement, SCE has requested confirmation of the cost recovery of these costs in SCE's 2014 Record Period ERRA Review proceeding.

1. The settlement reduces the amount SCE can recover in rates compared to the amounts the Commission had previously authorized. As anticipated when the settlement was approved, on November 24, 2015, SCE refunded a net of \$506 million, representing amounts it had collected for the period February 1, 2012, through December 31, 2014, before the settlement was approved. That net refund was effectuated via a credit to SCE's Energy Resource Recovery Account ("ERRA") and a debit to SCE's Base Revenue Requirement Balancing Account ("BRRBA") and has been fully reflected in customer rates.

2. In addition to the retrospective refund for 2012-2014, SCE also reduced the SONGS-related amount it collected in 2015, relative to the amounts it would have recovered under the Commission's 2012 General Rate Case decision, in the amount of \$429 million. This reduction was also anticipated when the settlement was approved.

3. For the entire period that SONGS operated, SCE collected amounts from customers that were saved in a Nuclear Decommissioning Trust ("NDT"). With the Commission's approval, SCE applied \$282 million from the NDT to defray SONGS costs that SCE had previously collected in rates, and SCE credited a portion of that amount to its ERRA account and another portion to its BRRBA. SCE applied another \$26 million from the NDT to pay for capital investments that were included in the regulatory assets to be recovered in customer rates under the settlement.<sup>18</sup> While the possibility of a withdrawal from the NDT was anticipated at the time the settlement was approved, the amount of the withdrawal and corresponding rate reductions were not estimated at that time.

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<sup>18</sup> Advice Letter 3303-E (Nov. 2, 2015). SCE also withdrew another \$13 million from the NDT, which SCE retained to offset costs that were never included in customer rates. The advice letters implementing the Amended Settlement Agreement, referenced herein, are attached as Appendix 3.

4. As noted, SCE credited customers \$293 million, representing 95% of SCE's share of the net recovery from NEIL, after deducting litigation costs. This amount was not estimated when the settlement was approved.

5. SCE has pursued claims against the Department of Energy ("DOE") for the costs of storing spent nuclear fuel, based on DOE's failure to live up to its commitment to move spent nuclear fuel to a permanent repository. SCE recently reached a settlement with DOE for costs incurred in certain years through 2013.<sup>19</sup> SCE intends to propose to apply \$72 million of that recovery as a credit against the SONGS investment balance, thereby further reducing the amount that customers pay in rates under the settlement.<sup>20</sup> This amount was not estimated when the settlement was approved.

6. SCE has also implemented certain other credits and debits, as more fully described below.

As a result of these refunds and credits, the PVRR of the settlement – *i.e.*, the present value of the amounts paid by customers in rates under the settlement – has been reduced from \$2.5 billion estimated when the settlement was approved to \$2 billion, as show in in Table 2:

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<sup>19</sup> A copy of the settlement agreement with DOE is attached hereto as Appendix 2.

<sup>20</sup> SCE expects to propose this credit in supplemental testimony in the 2015 Record Period ERRA Review Proceeding, A.16-04-001, to the extent permitted by tax rules. If tax rules make this proposal infeasible, then SCE will propose to return the same amount to customers in another manner. The \$72 million credit reflects the portion of the DOE settlement that is attributable to assets that are being recovered as regulatory assets under the settlement. SCE expects to propose to apply \$3 million of the DOE settlement that is attributable to O&M as a credit to BRRBA. Finally, SCE expects to propose to retain \$17 million of the DOE settlement attributable to assets which were never included in rates.

**Table 2: Updated PVRR Estimate (in millions)**

	Feb- Dec 2012 <sup>21</sup>	2013	2014	2015	2016	2017	2018	2019	2020	2021	Jan 2022	Total	PVRR 10.00%
<b>SCE-56 - Revised</b>													
Base Plant (incl. M&S)	104	91	202	155	59	184	178	175	171	166	12	1,497	1,056
O&M	289	260	106	-	-	-	-	-	-	-	-	655	645
Refueling O&M	41	-	-	-	-	-	-	-	-	-	-	41	41
Nuclear Fuel	45	48	48	48	57	62	61	58	56	54	4	541	388
Replacement Power	262	127	-	-	-	-	-	-	-	-	-	389	389
<b>Total</b>	741	526	356	203	116	246	239	233	227	220	16	3,123	2,519
											Original SCE- 56 <sup>21</sup>	3,141	2,537
<b>June 2, 2016 Update</b>													
Base Plant (incl. M&S)	107	93	192	145	206	72	156	152	149	146	9	1,427	1,029
O&M	281	262	100	-	-	-	-	-	-	-	-	643	634
Refueling O&M	40	1	-	-	-	-	-	-	-	-	-	41	41
Nuclear Fuel	46	49	49	49	49	51	52	51	49	47	4	496	362
Replacement Power	-	467	-	-	-	-	-	-	-	-	-	467	467
M&S Sales	-	-	(5)	(1)	-	-	-	-	-	-	-	(6)	(5)
MHI Net Proceeds	-	-	(4)	-	-	-	-	-	-	-	-	(4)	(4)
Prop Tax True-ups	-	-	-	5	8	-	-	-	-	-	-	13	10
Refund from Trust	-	-	-	(282)	-	-	-	-	-	-	-	(282)	(256)
NEIL	-	-	-	(293)	-	-	-	-	-	-	-	(293)	(242)
<b>Total</b>	474	872	332	(377)	263	123	208	203	198	193	13	2,502	2,036

Importantly, SCE is endeavoring to further reduce the remaining SONGS costs that would otherwise be recovered in rates under the settlement. The following table summarizes the future events that could result in additional credits for the benefit of customers:

**Table 3: Summary of Major Potential Future Refunds & Credits**

	<u>Description</u>	<u>Customer Share of Recovery</u>
1.	Mitsubishi Litigation Proceeds	<b>50%</b> of net recoveries
2.	Nuclear Fuel Sale Proceeds	<b>95%</b> of net proceeds

These actions, which are more fully explained below, are summarized as follows:

<sup>21</sup> The PVRRs of \$2.537 billion and \$2.635 billion have been revised to correct for the 2012 O&M amount. The original PVRR included an entire year of 2012 O&M and the O&M should have been reduced by \$18 million to prorate the annual O&M to the eleven month period of February 1, 2012 through December 31, 2012.

1. SCE is vigorously pursuing claims against Mitsubishi for the damages caused by the defective steam generators. Under the settlement, any recoveries SCE obtains from Mitsubishi, after netting litigation costs, are shared 50/50 with customers. The customer share will be credited against the SONGS costs that customers pay for in settlement rates or otherwise refunded.

2. SCE also intends to sell its nuclear fuel inventory, and under the settlement, 95% of the net proceeds of each sale will be credited against the SONGS costs that customers pay for in settlement rates. SCE's original cost to purchase the fuel as of October 31, 2014, was \$487 million, and while the amount SCE will realize in future sales is uncertain, SCE expects that the proceeds will meaningfully reduce the amounts customers will pay in rates.

## 2. Recovery of SONGS Costs

The following table summarizes the SONGS costs that SCE has recovered pursuant to the Amended Settlement Agreement:

**Table 4: SONGS Settlement Regulatory Asset Balance Summary (in millions)**

	Beg Bal	2012 Amort	2013 Amort	2014 Amort	Fuel Resalable Costs	2015 Amort	Reimburse From NDT	2016 Amort thru 4/30/16	Nuclear Fuel Incentive <sup>22</sup>	Reimburse From Trust (ISFSI)	Total thru 4/30/16	Est. Amort thru 12/31/16	Est. DOE Rnd. 2 Lit. Net Proceeds	Est. Bal. 12/31/16
Base Plant	\$622	(\$57)	(\$62)	(\$62)	-	(\$62)	-	(\$22)	-	(\$21)	\$336	(\$41)	(\$72)	\$223
Completed CWIP	\$370	(\$15)	(\$26)	(\$31)	-	(\$42)	(\$14)	(\$13)	-	-	\$229	(\$26)	-	\$203
Cancelled CWIP	\$155	(\$14)	(\$15)	(\$15)	-	(\$15)	-	(\$5)	-	-	\$91	(\$10)	-	\$81
M&S	\$99	(\$9)	(\$10)	(\$10)	-	(\$10)	-	(\$3)	-	-	\$57	(\$7)	-	\$50
Nuclear Fuel	\$487	(\$45)	(\$49)	(\$49)	(\$8)	(\$49)	(\$12)	(\$15)	\$2	-	\$262	(\$32)	-	\$231
<b>Total</b>	<b>\$1,733</b>	<b>(\$140)</b>	<b>(\$162)</b>	<b>(\$167)</b>	<b>(\$8)</b>	<b>(\$178)</b>	<b>(\$26)<sup>23</sup></b>	<b>(\$58)</b>	<b>\$2</b>	<b>(\$21)</b>	<b>\$975</b>	<b>(\$116)</b>	<b>(\$72)</b>	<b>\$787</b>

<sup>22</sup> All nuclear fuel contracts that had future purchase commitments have been terminated.

<sup>23</sup> This represents the \$26 million reduction to the SONGS-related capital and nuclear fuel regulatory asset that was the result of SCE's withdrawal from the NDT.

Beginning Balance	<b>\$1,733</b>	Beginning Balance	<b>\$1,733</b>
Total Balance on April 30, 2016	<b>\$975</b>	Total Est. Balance on December 31, 2016	<b>\$787</b>
SONGS Settlement Regulatory Asset	<b>\$758</b>	Est. SONGS Settlement Regulatory Asset	<b>\$946</b>
Recovery through April 30, 2016		Recovery through December 31, 2016	

This table shows that, of the \$1.733 billion in SONGS investment costs that the settlement authorizes SCE to recover, SCE has already recovered \$758 million (as of April 30, 2016), or 44% of the total investment. By the end of 2016, SCE expects to recover \$946 million, assuming application of \$72 million of proceeds from the DOE settlement. At that point, \$787 million (45%) in SONGS costs will remain to be recovered, either through proceeds of the Mitsubishi litigation, sales of nuclear fuel, or rates.

The tables and text above summarize at a high level the division of costs under the settlement and its implementation. In the sections that follow, SCE provides a more detailed discussion of the terms of the Amended Settlement Agreement, the various advice letters that implement the refund, credit, rate and other recoveries summarized in the foregoing discussion, the anticipated future actions to implement the Amended Settlement Agreement, and certain financial accounting issues associated with the Amended Settlement Agreement.

## **II. Summary of Settlement Agreement**

Ruling Paragraph 3 of the Joint Ruling directs SCE to “file and serve a Summary of Settlement Agreement, including a status report on implementation of the Settlement Agreement, specify and quantify all accounting and ratemaking actions taken to date, planned actions for 2016, and planned actions required for future years ....”<sup>24</sup> This section summarizes the Amended Settlement Agreement as it relates to SCE.

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<sup>24</sup> Joint Ruling at 8.



**A. SGRP Net Investment**

Pursuant to the Amended Settlement, SCE ceased to collect the Capital-Related Revenue Requirement<sup>25</sup> for the SGRP as of February 1, 2012; the Net Book Value of the SGRP remaining as of that date (which, for SCE, was \$597 million) will not be recovered from customers.<sup>26</sup> The Amended Settlement Agreement requires SCE to refund or credit to customers all amounts previously collected in rates as the Capital-Related Revenue Requirement for the SGRP on or after February 1, 2012.<sup>27</sup> As discussed below, in SCE's case, this amounted to a credit of \$332 million. The Amended Settlement Agreement permits SCE to retain all amounts collected in rates as the Capital-Related Revenue Requirement for the SGRP for periods prior to February 1, 2012 (*i.e.*, the period during which the steam generators operated).<sup>28</sup>

**B. Non-SGRP Net Investment ("Base Plant")**

The Amended Settlement Agreement requires SCE to remove Base Plant from the rate base as of February 1, 2012, and to amortize that amount in rates as a regulatory asset over ten years at a reduced rate of return.<sup>29</sup> "Base Plant" refers to the Net Book Value of all SONGS-related capital investments in SCE's rate base, excluding the SGRP, Materials and Supplies, and Nuclear Fuel Investment, all as defined in the Amended Settlement Agreement.<sup>30</sup> The Amended Settlement Agreement authorizes a significantly reduced rate of return for Base Plant, calculated as SCE's Authorized Cost of Debt plus 50% of its Authorized Cost of Preferred Stock, weighted

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<sup>25</sup> As defined in the Amended Settlement Agreement, § 2.9. Capitalized terms used herein have the meanings set forth in the Amended Settlement Agreement.

<sup>26</sup> *Id.*, §§ 4.2(a), (d).

<sup>27</sup> *Id.*, § 4.2(b).

<sup>28</sup> *Id.*, § 4.2(c).

<sup>29</sup> *Id.*, § 4.3.

<sup>30</sup> *Id.*, § 2.6.

by the amount of debt and preferred stock in the Utility's authorized ratemaking capital structure, adjusted for taxes.<sup>31</sup> Under the settlement, for the period February 1, 2012, through December 31, 2012, SCE's authorized rate of return for Base Plant was set at 2.95%, and for 2013-2014 SCE's authorized rate of return for Base Plant was set at 2.62%.<sup>32</sup> The Amended Settlement Agreement provides that Base Plant will be amortized ratably over the period from February 1, 2012, to February 1, 2022.<sup>33</sup>

The Amended Settlement Agreement provides that SCE will refund or credit all amounts collected in rates from February 1, 2012, in excess of the amounts permitted by the Amended Settlement Agreement in respect of Base Plant.<sup>34</sup> As discussed below, for SCE, this amount is \$116 million.

Finally, the Amended Settlement Agreement provides for SCE to recover in rates all property taxes paid with respect to Base Plant. In order to accomplish this, SCE trues up forecasted property taxes to actual taxes paid.<sup>35</sup>

**C. CWIP (Construction Work in Progress)**

CWIP refers to the amount incurred for SONGS capital projects that were in progress at the time the outages began. Allowance for Funds Used During Construction (AFUDC) refers to a carrying cost on capital investments during the construction period. The Amended Settlement Agreement provides for SCE to collect the full balance of CWIP, except the portion associated

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<sup>31</sup> *Id.*, §§ 4.3(c), (i).

<sup>32</sup> *Id.*, §§ 4.3(e), (f). SCE's authorized rate of return for Base Plant is still 2.62% and is expected to remain at that level through 2017.

<sup>33</sup> *Id.*, § 4.3(b)(i).

<sup>34</sup> *Id.*, § 4.3(b)(ii).

<sup>35</sup> *Id.*, § 4.3(j).

with the SGRP, as a regulatory asset.<sup>36</sup> For Cancelled CWIP,<sup>37</sup> AFUDC is added to the CWIP balance for the period up to January 31, 2012.<sup>38</sup> The resulting CWIP balance is recovered ratably over the period from February 1, 2012, to February 1, 2022.<sup>39</sup> For Completed CWIP,<sup>40</sup> the AFUDC is added to the CWIP balance for the period up to the Effective Date of the settlement, with the AFUDC rate varying based on time period.<sup>41</sup> The resulting CWIP balance is recovered ratably starting on the earlier of the date the asset was placed in service or the Effective Date and ending on February 1, 2022.<sup>42</sup> The same reduced rate of return applies to the CWIP balances.

**D. M&S (Materials and Supplies)**

M&S refers to spare parts and other assets held in inventory for use at SONGS. The Amended Settlement Agreement provides for rate recovery of SCE's entire SONGS M&S investment as a regulatory asset over a ten-year period, with the same reduced rate of return applied to Base Plant.<sup>43</sup> The Amended Settlement Agreement also provides an incentive mechanism to encourage SCE to sell its M&S investment assets, allowing SCE to retain 5% of all such sales, with the remaining 95% of the proceeds credited to customers.<sup>44</sup>

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<sup>36</sup> *Id.*, § 4.8(a).

<sup>37</sup> Defined in *id.*, § 2.13(a).

<sup>38</sup> *Id.*, § 4.8(a)(i).

<sup>39</sup> *Id.*, §§ 4.8(a)(i)(A).

<sup>40</sup> Defined in *id.*, § 2.13(b).

<sup>41</sup> *Id.*, § 4.8(a)(ii).

<sup>42</sup> *Id.*, §§ 4.8(a)(ii)(C).

<sup>43</sup> *Id.*, § 4.5(a).

<sup>44</sup> *Id.*, § 4.5(b).

#### **E. Nuclear Fuel**

The Amended Settlement Agreement provides for rate recovery of SCE's Nuclear Fuel Investment ratably over a ten-year period,<sup>45</sup> with a rate of return equal to the commercial paper rate.<sup>46</sup> Nuclear Fuel Investment includes the Net Book Value of nuclear fuel plus Fuel Cancellation Costs (which are the costs of cancelling contracts to purchase fuel).<sup>47</sup> The Amended Settlement Agreement also provides two incentive mechanisms to SCE to sell its nuclear fuel investment and cancel its outstanding obligations to purchase more nuclear fuel.<sup>48</sup> First, customers receive 95% of the net proceeds of the sale of nuclear fuel, with SCE retaining the remaining 5%.<sup>49</sup> Second, to incentivize the minimization of outstanding obligations to purchase fuel, SCE is permitted to add 5% to the value of the regulatory asset of the difference between the stated purchase obligations and the costs incurred to cancel the fuel contracts.<sup>50</sup>

#### **F. O&M Expenses**

In each tri-annual general rate case ("GRC"), the Commission authorized SCE to recover in rates an amount determined to reflect the reasonable O&M costs for SONGS. Under the Amended Settlement Agreement, SCE may retain all rate revenues collected for the year 2012 pursuant to the revenue requirement for O&M Expenses that the Commission provisionally authorized in SCE's Test Year 2012 GRC.<sup>51</sup> The Amended Settlement Agreement also permits SCE to retain all revenues collected pursuant to the provisionally authorized revenue requirement

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<sup>45</sup> *Id.*, § 4.6(a).

<sup>46</sup> *Id.*, §§ 4.6(a), (b).

<sup>47</sup> *Id.*, §§ 2.30 (defining Nuclear Fuel Investment), 2.17 (defining Fuel Cancellation Costs).

<sup>48</sup> *Id.*, § 4.7.

<sup>49</sup> *Id.*, § 4.7(a).

<sup>50</sup> *Id.*, § 4.7(c).

<sup>51</sup> *Id.*, § 4.9(a).

for 2012 Non-O&M expenses.<sup>52</sup> SCE also spent additional amounts specifically related to the SONGS steam generator tube failure and related outages, which are referred to as steam generator inspection and repair (“SGIR”) costs. The Amended Settlement Agreement disallows recovery of any SGIR costs in excess of the provisionally authorized revenue requirement for O&M in 2012.<sup>53</sup> In SCE’s case, this means that \$99 million in SGIR costs incurred in 2012 were disallowed (*i.e.*, not recovered from SCE’s customers).

The Amended Settlement Agreement authorizes SCE to recover all recorded O&M costs incurred in connection with the Unit 2 Cycle 17 planned refueling outage, in accordance with the Commission’s traditional ratemaking practices.<sup>54</sup>

The Amended Settlement Agreement permits SCE to retain revenues collected for O&M, SONGS-related severance expenses, incremental steam generator inspection and repair costs, and Non-O&M expenses recorded in 2013.<sup>55</sup> This recovery is permitted so long as these costs did not exceed the revenue requirement provisionally authorized for O&M and Non-O&M expenses in the 2012 GRC.<sup>56</sup>

The Amended Settlement Agreement provides that 2014 O&M and Non-O&M expenses are subject to ordinary reasonableness reviews by the Commission.<sup>57</sup> The Amended Settlement Agreement also requires SCE to refund to customers any amounts collected in 2014 pursuant to

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<sup>52</sup> *Id.*, § 4.9(b). Section 4.9(b) requires SCE to refund 2012 revenues that exceed recorded Non-O&M Expenses by more than \$10 million, but as this did not occur, no such refund was required.

<sup>53</sup> *Id.*, § 4.9(a)(ii).

<sup>54</sup> *Id.*, § 4.9(l).

<sup>55</sup> *Id.*, §§ 4.9(e), (g).

<sup>56</sup> *Id.*, §§ 4.9(f), (g).

<sup>57</sup> *Id.*, § 4.9(h).

the revenue requirement for SONGS-related O&M and non-O&M expenses provisionally authorized in the 2012 GRC that exceed SCE's recorded SONGS-related expenses in 2014.<sup>58</sup>

**G. Refund Mechanism**

The Amended Settlement Agreement provides that any refund of revenues collected in 2012-2014, as described in the settlement, be effectuated via a reduction to the under-collected ERRA balance as of October 31, 2014.<sup>59</sup>

**H. Replacement Power**

The Amended Settlement Agreement allows SCE to recover all purchased power costs associated with replacing the output of SONGS from February 1, 2012, until October 31, 2014 ("Replacement Power Costs").<sup>60</sup> The Amended Settlement Agreement provides for SCE to recover the entire SONGS-related portion of the under-collected balance in the ERRA account as of October 31, 2014, and to amortize this balance by December 31, 2015.<sup>61</sup>

**I. Third-Party Recoveries**

The Amended Settlement Agreement requires SCE to establish memorandum accounts to track SONGS litigation costs and any recoveries from NEIL and Mitsubishi.<sup>62</sup> It also establishes separate sharing formulas for the division of potential proceeds from NEIL and Mitsubishi between SCE and its customers.<sup>63</sup> In the case of recoveries from NEIL relating to the outage policy, after SONGS Litigation Costs are netted, the Amended Settlement Agreements provides

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<sup>58</sup> *Id.*, § 4.9(i).

<sup>59</sup> *Id.*, § 4.12.

<sup>60</sup> *Id.*, § 4.10(a).

<sup>61</sup> *Id.*, § 4.10(b).

<sup>62</sup> *Id.*, § 4.11(a).

<sup>63</sup> *Id.*, § 4.11(c).

for proceeds to be allocated 95% to customers and 5% to shareholders.<sup>64</sup> Customers are to receive their share of NEIL recoveries through a credit to the ERRR balancing account.<sup>65</sup> In the case of recoveries from Mitsubishi, after SONGS Litigation Costs are netted, the proceeds are allocated 50% to customers and 50% to shareholders.<sup>66</sup> Customers are to receive the first \$282 million of their share of Mitsubishi recovery as a credit to SCE's BRRBA, and any further recoveries applied to reduce the regulatory assets for Base Plant, CWIP, M&S, and Nuclear Fuel.<sup>67</sup>

#### **J. Nuclear Decommissioning Trust ("NDT")**

Following the permanent shutdown of SONGS, SCE sought and received the Commission's approval to access the NDT to defray the costs of decommissioning SONGS, including O&M costs after June 7, 2013, the date SCE announced the permanent shutdown of SONGS.

The Amended Settlement Agreement requires SCE to attempt to recover M&S Investment,<sup>68</sup> completed CWIP that enters service after June 7, 2013,<sup>69</sup> and O&M and Non-O&M costs,<sup>70</sup> through the NDT, rather than recovering these costs through electric service rates,

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<sup>64</sup> *Id.*, § 4.11(c)(ii). With respect to any recoveries under the NEIL property policy, SCE is entitled to 17.5% and customers are entitled to the remaining 82.5%. *Id.*, § 4.11(c)(iii). The entirety of the NEIL recovery was allocated to the outage policy.

<sup>65</sup> *Id.*, § 4.11(d)(i).

<sup>66</sup> *Id.*, § 4.11(c)(iv).

<sup>67</sup> *Id.*, §§ 4.11(d)(ii), (iv)(A).

<sup>68</sup> *Id.*, § 4.5(d).

<sup>69</sup> *Id.*, § 4.8(b).

<sup>70</sup> *Id.*, §§ 4.9(f), (g).

whenever possible. To the extent SCE is successful, the Amended Settlement Agreement requires SCE to refund any rates collected that duplicate trust recoveries.<sup>71</sup>

**K. University of California GHG Research Contribution**

The September 5, 2014 Ruling requested that the settling parties modify the proposed settlement agreement by adding a provision for shareholder funding of greenhouse gas (“GHG”) research.<sup>72</sup> Accordingly, the Amended Settlement Agreement provides for SCE to work with the University of California Energy Institute (or other existing UC entity, on one or more campuses, engaged in energy technology and development) to create a Research Development and Demonstration program with the goal to deploy new technologies, methodologies, and/or design modifications to reduce GHG emissions, particularly at current and future generating plants in California (the “Program”).<sup>73</sup> The Amended Settlement Agreement provides, in accordance with the September 5, 2014 Ruling, that the Program is to operate for up to five years, with SCE donating \$4 million annually from shareholder funds.<sup>74</sup> The Amended Settlement Agreement also requires a meeting between SCE and the University of California within 60 days of the settlement’s adoption in order to craft a Program Implementation Plan (“PIP”), with the PIP to be filed with the Commission within 30 days after the meeting.<sup>75</sup>

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<sup>71</sup> *Id.*, §§ 4.5(d), 4.8(b), 4.9(f), (g).

<sup>72</sup> September 5, 2014 Ruling at 9-10.

<sup>73</sup> Amended Settlement Agreement, § 4.16(a).

<sup>74</sup> *Id.*, § 4.16(c).

<sup>75</sup> *Id.*, §§ 4.16(d), (e).



**L. Commission Oversight of Agreement Implementation**

The Amended Settlement Agreement provides for Commission review of Third Party Recoveries and SONGS Litigation Costs,<sup>76</sup> requires SCE to file Tier 2 Advice Letters to implement changes to its revenue requirements pursuant to the Agreement, and provides for SCE to file revised tariff sheets.<sup>77</sup>

**III. Status of Settlement Implementation**

This section summarizes the status of the regulatory accounting and associated rate impacts of the past and anticipated future actions implementing the Amended Settlement Agreement, and the financial account impact of implementing the Amended Settlement Agreement.

**A. Retrospective Rate Credits and Reductions**

Through a series of advice letters discussed below, SCE has implemented the Amended Settlement Agreement by providing refunds of amounts previously collected in rates and by reducing the amounts it collects in rates prospectively. These changes are summarized in the following table:

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<sup>76</sup> *Id.*, § 4.11(i).

<sup>77</sup> *Id.*, §§ 6.2, 6.3.

**Table 5: Detailed Summary of SONGS Settlement Rate Credits and Reductions**

	<b>Description</b>	<b>Total (in millions)</b>	<b>Notes</b>
1.	Refund for February 1, 2012 – December 31, 2014	\$506	Described in Advice Letter 3139-E. Implemented Advice 3311-E.
2.	2015 Reduction in SONGS Revenue Requirement	\$429	Described and Implemented in Advice 3155-E.
3.	NDT Credit	\$282	Described in Advice Letter 3303-E. Implemented Advice 3319-E.
4.	NEIL Settlement Net Proceeds	\$293	Described in Advice Letter 3367-E. Implemented D.15-12-033.
5.	DOE Settlement Net Proceeds	\$72	Forthcoming.
6.	2015-2016 M&S Sales Net Proceeds	\$1	M&S Sales in addition to the \$5 million discussed in Advice Letter 3139-E. Implemented annually as they occur.
7.	2014 & 2015 Property Tax True-up	(\$13)	2014 true-up discussed in Advice Letter 3303-E. Additional true-ups ( <i>i.e.</i> , 2015) are implemented annually in rates as they occur.
	<b>Total Net Reduction</b>	<b>\$1,570</b>	

**1. Refund for February 1, 2012 – December 31, 2014**

The implementation of the Amended Settlement Agreement resulted in a refund to customers of \$506 million for the period February 1, 2012, through December 31, 2014. This refund represents the difference in the revenue requirement authorized under the Amended Settlement Agreement and the SONGS-related revenue requirement that SCE had provisionally collected from customers.<sup>78</sup> Table 6 provides a breakdown of that credit.

<sup>78</sup> Advice Letter 3139-E at 6 n. 6 (Nov. 26, 2014) (noting that “[t]he Commission, in SCE’s 2012 GRC Decision (D.12-11-051) and in I.12-10-013, set the SONGS-related revenue requirement subject to refund pending the outcome of I.12-10-013”).

**Table 6:** SONGS Settlement Agreement Refund, February 1, 2012–December 31, 2014

	<u>Description</u>	<u>Total (in millions)</u>	<u>Amended Settlement Agreement</u>
1.	<b>Capital Revenue Requirement</b>		
2.	Steam Generator Replacements	(\$332)	§ 4.2(b)
3.	Base Plant / CWIP	<u>(\$116)</u>	§§ 4.3(b), 4.8
4.	Capital Subtotal	(\$448)	
5.	<b>Materials &amp; Supplies</b>	\$29	§ 4.5
6.	<b>Nuclear Fuel Investment</b>	\$142	§ 4.6
7.	<b>O&amp;M</b>	(\$275)	§§ 4.9(b), (f), (j)(ii), (j)(iv)
8.	<b>Non-O&amp;M</b>	\$24	§ 4.9(g)
9.	<b>Nuclear Fuel Carrying Costs</b>	(\$9)	
10.	<b>Interest on Refund</b>	<u>(\$1)</u>	
11.	<b>Total Refund Through ERRA</b>	<u><b>(\$538)</b></u> <sup>79</sup>	
12.	<b>Unit 2 C17 RFO</b>	\$41	§ 4.9(l)
13.	<b>M&amp;S Sales (95%)</b>	(\$5)	§ 4.5(b)
14.	<b>Net Mitsubishi Proceeds</b>	<u>(\$4)</u>	§ 4.11(c)(iv)
15.	<b>Net Recovery through BRRBA</b>	<u><b>\$32</b></u>	
16.	<b>TOTAL NET REFUND</b>	<b>(\$506)</b> <sup>80</sup>	

This \$506 million net refund was implemented in rates as part of the 2015 ERRRA Forecast Settlement Agreement, approved by the Commission in D.15-10-037, 2015 WL 6803752 (Cal. P.U.C. Oct. 22, 2015) and implemented through Advice Letter 3311-E, submitted on November 18, 2015, effective November 24, 2015.<sup>81</sup>

<sup>79</sup> This refund included estimated November and December 2014 amounts for a total of \$538 million. SCE actually recorded a \$540 million credit in ERRRA, which includes a true-up of \$2 million for November and December 2014.

<sup>80</sup> See Advice Letter 3139-E at 7-8 (describing Implementation of SONGS Settlement Agreement and actions incorporated into SCE's 2015 ERRRA Forecast Update Testimony, A.14-06-011, and implemented as part of the 2015 ERRRA Forecast Settlement Agreement).

<sup>81</sup> In A.15-01-014, filed on January 30, 2015, SCE seeks a reasonableness determination of 2014 SONGS O&M and non-O&M expenses. This application remains pending.

In the same advice letter, and also pursuant to the Amended Settlement Agreement,<sup>82</sup> SCE proposed to recover \$462 million<sup>83</sup> in 2013 market power costs, which the Commission had excluded from SCE's ERRA Forecast and subsequent rate recovery pending resolution of this proceeding.<sup>84</sup> Advice Letter 3311-E implemented recovery of these costs on November 24, 2015, at the same time as the \$506 million refund was implemented in rates. An after-the-fact review of these costs is currently being addressed in SCE's pending 2014 Record Period ERRA Review proceeding. A settlement in the proceeding has been filed with the Commission and the motion for its approval is pending.

Advice Letter 3311-E also implemented the ratemaking of the Amended Settlement Agreement in relation to Direct Access ("DA") customers. Pursuant to the 2015 ERRA Forecast Settlement Agreement, an allocable share of the net refund of \$506 million discussed above was incorporated into the Power Charge Indifference Amount as a one-time decrease to portfolio costs, while an allocable share of the \$462 million "net SONGS costs" for 2013 was implemented as a one-time increase to portfolio costs. This outcome was approved by the Commission in D.15-10-037.<sup>85</sup>

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<sup>82</sup> Amended Settlement Agreement, § 4.10.

<sup>83</sup> Adjusted for franchise fees and uncollectibles, the replacement power totals \$466.7 million. *See* Advice Letter 3139-E at 9 n.10.

<sup>84</sup> Advice Letter 3139-E at 9 (describing the requirement in D.14-05-003, 2014 WL 1824806 (Cal. P.U.C. May 1, 2014), SCE's 2014 ERRA Forecast Decision, that SCE defer recovery of net SONGS costs recorded in SCE's ERRA as of December 31, 2013, until the Commission resolves the issues in this proceeding).

<sup>85</sup> *See* Advice Letter 3147-E (Dec. 12, 2014); Advice Letter 3147-E-B (Sept. 10, 2015) (describing the recovery of "Net SONGS Costs" from DA customers as a component of the 2015 ERRA Forecast Settlement Agreement).

## 2. 2015 Reduction in SONGS Revenue Requirement

In addition to the retrospective refund described above, SCE also implemented a prospective reduction in its revenue requirement effective as of January 1, 2015, as shown in line 2 of Table 4.<sup>86</sup> By removing the authorized SONGS-related revenue requirement, removing the SONGS Steam Generator Replacement revenue requirement, and implementing the 2015 SONGS Settlement revenue requirement, SCE reduced the SONGS-related revenue requirement by \$429 million compared to the rates provisionally authorized in the 2012 GRC, D.12-11-051, as illustrated below in Table 7.<sup>87</sup>

**Table 7: 2015 SONGS Revenue Requirement Reduction**

	<u>Description</u>	<u>Total (in millions)</u>
1.	Current SONGS-related Authorized GRC Revenue Requirement	\$514
2.	SGRP	\$109
3.	2015 SONGS Settlement Revenue Requirement	(\$194)
4.	<b>Total Reduction in Revenue Requirement</b>	<b>\$429<sup>88</sup></b>

## 3. NDT Credit

The SONGS Settlement Agreement revenue requirement was further reduced once the Commission authorized SCE to withdraw funds from the NDT.<sup>89</sup> The NDT funds were used to defray “O&M expenses incurred for SONGS decommissioning since June 7, 2013” and resulted in refunds to SCE’s customers pursuant to the Amended Settlement Agreement for amounts

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<sup>86</sup> SCE proposed this prospective reduction in Advice Letter 3155-E, filed on December 24, 2014.

<sup>87</sup> Advice Letter 3155-E at 4 (describing changes to SCE’s revenue requirement arising from the Implementation of the Amended Settlement Agreement).

<sup>88</sup> *See id.*

<sup>89</sup> Resolution E-4678 (July 27, 2015).

previously collected by SCE in rates.<sup>90</sup> SCE withdrew \$319 million from the NDT, retaining \$13 million for O&M expenses and capital expenditures that SCE incurred but had not previously recovered in rates.<sup>91</sup> The remaining funds withdrawn from the NDT, totaling \$307 million, were returned to customers through a \$258 million credit to ERRA, a \$23 million credit to BRRBA, and a \$26 million reduction to the SONGS-related capital and nuclear fuel regulatory asset.<sup>92</sup> The credits to ERRA and BRRBA associated with the return of NDT funds were recorded in August 2015 and were implemented through rate reductions effective January 1, 2016.<sup>93</sup> The impact of these rate changes are summarized in Table 8.

**Table 8:** Rate Impacts of Nuclear Decommissioning Trust Withdrawal,  
Effective January 1, 2016

	<u>Description</u>	<u>Total (in millions)</u>	<u>Advice Letter</u>
1.	ERRA Recorded Credit Requirement	\$258	<i>See Advice Letter 3303-E, Page 6-7.</i>
2.	BRRBA Recorded Credit	\$23	<i>See Advice Letter 3303-E, Page 6-7.</i>
3.	<b>Total Recorded Credit</b>	<b>\$282</b>	<i>See Advice Letter 3319-E and 3319-E-A.</i>

#### 4. NEIL Proceeds

On October 22, 2015, SCE announced that the SONGS owners had reached a settlement with NEIL.<sup>94</sup> SCE's share of the proceeds from the NEIL settlement was \$313 million.<sup>95</sup> After

<sup>90</sup> Advice Letter 3139-E at 4; Amended Settlement Agreement, §§ 4.5(d), 4.8(b), 4.9(g), and 4.9(i).

<sup>91</sup> Advice Letter 3303-E at 7.

<sup>92</sup> *Id.* SCE deferred withdrawal of \$21 million from the NDT pending action by the IRS on a private letter ruling request regarding disbursements for the ISFSI costs. *See* Advice 3303-E at 6. As shown above in Table 4, once SCE received a favorable private letter ruling from the IRS, SCE withdrew those funds and applied them.

<sup>93</sup> *See* Advice Letters 3319-E and 3319-E-A.

<sup>94</sup> Advice Letter 3367-E at 2.

deducting SONGS Litigation Costs, SCE allocated 95% of the net proceeds, or \$293 million, to customers as a credit to ERRA, as summarized in Table 9.<sup>96</sup>

**Table 9:** NEIL Settlement Proceeds Refund (Estimate), Effective January 1, 2016

	<u>Description</u>	<u>Total (in millions)</u>	<u>Settlement Agreement Section</u>
1.	NEIL Settlement Net Proceeds	\$293	4.11

SCE transferred these proceeds to its ERRA account in December, 2015,<sup>97</sup> and began refunding the \$293 million to customers on January 1, 2016.<sup>98</sup>

## 5. M&S Sales Proceeds

SCE has credited BRRBA in 2015 and 2016 \$1 million to reflect the customers' share of the proceeds of the sale of M&S.<sup>99</sup> No further sales of M&S are planned. This refund is summarized in Table 10.

**Table 10:** SONGS M&S Sale Proceeds January 1, 2015–March 31, 2016

	<u>Description</u>	<u>Total (in millions)</u>	<u>Settlement Agreement Section</u>
1.	2015-2016 M&S Sales Net Proceeds	\$1	4.5(b)

## 6. Property Taxes

SCE's annual SONGS Settlement revenue requirement includes a forecast of property taxes. SCE trues up the forecast to actual property taxes paid by an entry to BRRBA in the first

<sup>95</sup> *Id.* (describing the NEIL settlement and litigation costs incurred by SCE).

<sup>96</sup> Amended Settlement Agreement, § 4.11(c)(ii).

<sup>97</sup> *See* Advice Letter 3367-E at 2 n. 4.

<sup>98</sup> *Id.* at 2 n. 6; D.15-12-033 at 9 n. 27, 2015 WL 9471546 (Cal. P.U.C. Dec. 17, 2015).

<sup>99</sup> Amended Settlement Agreement, § 4.5(b).

quarter of each year.<sup>100</sup> For 2014, the actual property taxes paid were greater than the forecast, so SCE recorded a debit in BRRBA in 2015, as summarized in Table 11:

**Table 11: SONGS Property Tax True-up**

	<u>Description</u>	<u>Total (in millions)</u>	<u>Amended Settlement Agreement</u>
1.	<b>2015 BRRBA Property Tax True-up</b>	(\$5)	§ 4.3(j)

**B. 2016 Revenue Requirement**

SCE updated the SONGS revenue requirement for 2016, as follows:<sup>101</sup>

**Table 12: 2016 SONGS Settlement Agreement Revenue Requirement**

	<u>Description</u>	<u>Total (in millions)</u>	<u>Amended Settlement Agreement</u>
1.	Capital Revenue Requirement		
2.	Base Plant / CWIP	\$193	§§ 4.3(b), 4.8
3.	Materials & Supplies	\$10	§4.5
4.	Nuclear Fuel Investment	\$45	§4.6
5.	Nuclear Fuel Carrying Costs	\$4	§4.6(b)
6.	Franchise Fees and Uncollectibles	\$3	
7.	Total 2016 SONGS Settlement Agreement Revenue Requirement	<u>\$255</u>	

**C. Amortization Of SONGS Settlement Regulatory Assets**

As noted, under the Amended Settlement Agreement, the regulatory assets are generally amortized over the period February 1, 2012, through February 1, 2022. Table 13 displays the amortization of the regulatory assets through April 30, 2016, and the estimated amortization through December 31, 2016.

<sup>100</sup> Advice Letter 3303-E at 2 (discussing the implementation of the property tax true-up mechanism described in Section 4.3(j) of the Amended Settlement Agreement).

<sup>101</sup> Advice Letter 3303-E, filed November 2, 2015, and effective December 2, 2015.



**Table 13: SONGS Settlement Regulatory Asset Reduction (in millions)**

	Beg Bal	2012 Amort	2013 Amort	2014 Amort	Fuel Resalable Costs	2015 Amort	Reimburse From NDT	2016 Amort thru 4/30/16	Nuclear Fuel Incentive <sup>02</sup>	Reimburse From Trust (ISFSI)	Total thru 4/30/16	Est. Amort thru 12/31/16	Est. DOE Rnd. 2 Lit. Net Proceeds	Est. Bal. 12/31/16
Base Plant	\$622	(\$57)	(\$62)	(\$62)	-	(\$62)	-	(\$22)	-	(\$21)	\$336	(\$41)	(\$72)	\$223
Completed CWIP	\$370	(\$15)	(\$26)	(\$31)	-	(\$42)	(\$14)	(\$13)	-	-	\$229	(\$26)	-	\$203
Cancelled CWIP	\$155	(\$14)	(\$15)	(\$15)	-	(\$15)	-	(\$5)	-	-	\$91	(\$10)	-	\$81
M&S	\$99	(\$9)	(\$10)	(\$10)	-	(\$10)	-	(\$3)	-	-	\$57	(\$7)	-	\$50
Nuclear Fuel	\$487	(\$45)	(\$49)	(\$49)	(\$8)	(\$49)	(\$12)	(\$15)	\$2	-	\$262	(\$32)	-	\$231
<b>Total</b>	<b>\$1,733</b>	<b>(\$140)</b>	<b>(\$162)</b>	<b>(\$167)</b>	<b>(\$8)</b>	<b>(\$178)</b>	<b>(\$26)<sup>103</sup></b>	<b>(\$58)</b>	<b>\$2</b>	<b>(\$21)</b>	<b>\$975</b>	<b>(\$116)</b>	<b>(\$72)</b>	<b>\$787</b>

**D. Anticipated Future Actions to Implement the Settlement**

In the future, SCE expects to reduce further the amounts to be recovered in rates under the SONGS settlement. Table 14 summarizes the sources of potential future refunds and credits.

**Table 14: Summary of Potential Future Refunds & Credits**

<u>Description</u>	<u>Customer Share of Recovery</u>
1. Mitsubishi Litigation Proceeds	<b>50%</b> of net recoveries
2. Nuclear Fuel Sale Proceeds	<b>95%</b> of net proceeds
3. Financing Cost Savings	\$2 million (effective in rates January 1, 2017)
4. Property Tax True-up	(\$8 million)

Further detail on these items, and other anticipated future actions to implement the settlement, are provided below.

**1. Mitsubishi Litigation Proceeds Sharing**

SCE is actively pursuing claims against Mitsubishi for the failure of the replacement steam generators. In 2012, Mitsubishi paid \$45 million in respect of SONGS incremental

<sup>102</sup> All nuclear fuel contracts that had future purchase commitments have been terminated.

<sup>103</sup> This represents the \$26 million reduction to the SONGS-related capital and nuclear fuel regulatory asset that was the result of SCE's withdrawal from the NDT.

inspection and repair costs, subject to a reservation of rights, and SCE credited customers with its share of that payment after deducting SONGS Litigation Costs. Subsequently, the SONGS Co-Owners initiated an arbitration against Mitsubishi in accordance with the contract. The arbitration hearing concluded on April 29, 2016, and post-hearing briefs will be submitted at a later date. If Mitsubishi makes an additional payment to SCE in relation to SONGS, SCE will return to customers 50% of such proceeds, after netting SONGS Litigation Costs.<sup>104</sup>

## **2. Nuclear Fuel Sales Proceeds**

SCE plans to sell its nuclear fuel inventory, and will credit 95% of the net proceeds to customers in accordance with the Amended Settlement Agreement. As shown in Table 12, SCE's original cost of nuclear fuel as of October 31, 2014, was \$487 million. While the amount SCE will realize in future sales is uncertain, SCE expects that the proceeds will meaningfully reduce customers' obligations.

## **3. Financing Cost Sharing**

Under the Amended Settlement Agreement, SCE is authorized to exclude the regulatory assets being amortized pursuant to the Agreement when measuring its ratemaking capital structure.<sup>105</sup> This means that SCE could finance the regulatory assets solely with debt. The Amended Settlement Agreement requires SCE to share 50% of the resulting savings with customers, with the savings measured as the difference between the actual cost of financing the regulatory assets and the amount yielded by applying the rate of return calculated pursuant to the Amended Settlement Agreement.<sup>106</sup>

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<sup>104</sup> Amended Settlement Agreement, § 4.11(c)(iv).

<sup>105</sup> *Id.*, § 4.4(a).

<sup>106</sup> *See id.*, § 4.3(c).

SCE implemented this provision of the settlement in Advice Letter 3169-E. As of January 1, 2016, the customer share of finance savings totals \$2 million. This sum has been credited to BRRBA and will be applied to reduce 2017 rates. To the extent savings are realized in future years, SCE will provide additional credits, in accordance with the settlement.

#### **4. 2016 Property Tax True-up**

SCE has recorded a debit of \$8 million to the BRRBA in 2016 in order to true-up recovery of the actual property taxes paid by SCE in 2015 with the amount authorized as the forecasted revenue requirement for 2015.

#### **5. Income Tax Abandonment Deduction**

SCE's future rates could also be affected by the timing of a tax deduction. SCE's forecasted SONGS settlement revenue requirement includes a provision for income taxes. SCE's income tax liability will be reduced when it is able to take a deduction for the abandonment of SONGS. The timing of that deduction is uncertain, however, as it depends on when the Mitsubishi litigation is resolved. Once the matter is concluded, SCE will claim an abandonment deduction and flow through the tax benefits to customers by means of an appropriate adjustment to the revenue requirement for the applicable year.<sup>107</sup>

#### **6. University of California GHG Research Contribution**

SCE submitted its Utility-Administered University of California Greenhouse Gas Research and Reduction Program Implementation Plan to the Commission on April 20, 2015.<sup>108</sup> Commission staff rejected the Plan by letter dated March 11, 2016, which noted SCE's "failure to provide that administrative costs for the GHG research and reduction program shall be paid by

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<sup>107</sup> Advice Letter 3303-E at 5.

<sup>108</sup> Advice Letter 3207-E (Apr. 20, 2015).

Utilities’ shareholders, and [] its failure to address the allocation of benefits of IP developed through the GHG research program.” Commission staff directed SCE to file a new Advice Letter within 120 days, or by July 11, 2016.

**E. Financial Accounting Treatment of SONGS Settlement**

Ruling Paragraph 3 of the Joint Ruling directs SCE to “specify and quantify all accounting and ratemaking actions taken to date.” Above, SCE summarizes the regulatory accounting and ratemaking actions taken, and anticipated, to implement the Amended Settlement Agreement. In an effort to ensure that it is being fully responsive to the Joint Ruling, SCE also presents SCE’s financial accounting actions relative to the Amended Settlement Agreement.

As discussed above, the benefits of the settlement were presented in terms of PVRR, which reflect future cash flows. In contrast, financial accounting reflects the application of generally accepted accounting principles to the balance sheet. Accordingly, the write-offs taken for financial accounting purposes do not fully reflect the loss of future income resulting from settlement, which is captured in the PVRR calculations.

The outages and ultimate shutdown of SONGS, and the adoption of the Amended Settlement Agreement, have resulted in a financial accounting write off of \$845 million, as summarized in Table 15 below.

**Table 15:** Summary of SONGS Financial Account Write-Offs (in millions)

<b><u>Description</u></b>	<b><u>2012</u></b>	<b><u>2013</u></b>	<b><u>2014</u></b>	<b><u>2015</u></b>	<b><u>2016</u></b>	<b><u>Total</u></b>
Incremental Repair & Inspection Costs	(\$102)	(\$13)	-	-	-	(\$115)
SGR Impairment Charge	-	(\$575)	(\$163)	-	-	(\$738)
SGR Sales Tax Refund	-	-	\$7	-	-	\$7
SGR Property Tax Refund	-	-	\$5	-	-	\$5
Nuclear Fuel Cancellation Incentive Memo Account	-	-	-	\$2	-	\$2
SONGS Regulatory Asset Financing	-	-	-	\$2	-	\$2
NEIL Proceeds (95% / 5% sharing)	-	-	-	\$20	-	\$20
NEIL Litigation Costs	-	(\$1)	(\$2)	(\$1)	-	(\$4)

<b><u>Description</u></b>	<b><u>2012</u></b>	<b><u>2013</u></b>	<b><u>2014</u></b>	<b><u>2015</u></b>	<b><u>2016</u></b>	<b><u>Total</u></b>
Mitsubishi Proceeds (Pre-OII Settlement)	\$36	-	-	-	-	\$36
Mitsubishi Litigation Costs & Customer Refund (Pre-OII Settlement)	(\$3)	(\$13)	(\$16)	-	-	(\$32)
Mitsubishi Litigation Costs (Post-OII Settlement)	-	-	-	(\$21)	(\$7)	(\$28)
<b>Net Impact</b>	<b>(\$69)</b>	<b>(\$602)</b>	<b>(\$169)</b>	<b>\$2</b>	<b>(\$7)</b>	<b>(\$845)</b>

SCE wrote off \$102 million in SGIR expenses in 2012 and another \$13 million in 2013. This SGIR expense write-off was partially offset by a \$36 million payment received from Mitsubishi in 2012, but \$28 million of that payment was offset by litigation costs in 2012-2014 and \$4 million of that payment was refunded to customers through a credit to ERRA in November 2014. Following the announcement of the decision in June 2013 to permanently shut down SONGS, SCE removed \$1.655 billion of SONGS-related assets from its property, plant, and equipment accounting, as well as \$511 million in nuclear fuel inventory. At the same time, SCE recorded a regulatory asset in the amount of \$1.521 billion as of May 31, 2013. SCE concurrently recorded a \$575 million impairment as a shareholder cost. After SCE entered into the Settlement Agreement in March 2014, SCE recorded an additional \$163 million impairment as a shareholder cost, including \$19 million in present value for the GHG research contribution to the University of California.

Date: June 2, 2016

Respectfully Submitted,

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SOUTHERN CALIFORNIA EDISON COMPANY

## **Appendix 1**

## Appendix 1: Glossary of Terms

**AFUDC:** Allowance for Funds Used During Construction. (Settlement § 2.1)

**Amended Settlement Agreement:** The settlement agreement approved by the Commission in D.14-11-040.

**Authorized Cost of Debt:** The rate of return on debt authorized by the Commission for a given utility from time to time. This rate of return may change during any of the amortization periods set forth in the Amended Settlement Agreement. (Settlement § 2.4)

**Authorized Cost of Preferred Stock:** The rate of return on preferred stock authorized by the Commission for a given utility from time to time. This rate may change during any of the amortization periods set forth in the Amended Settlement Agreement. (Settlement § 2.5)

**Base Plant:** The Net Book Value of all SONGS-related capital investments, except the SGRP, M&S Investment, and Nuclear Fuel Investment. (Settlement § 2.5)

**BRRA:** The generation sub-account of the Base Revenue Requirement Balancing Account. (Settlement § 2.7)

**Capital-Related Revenue Requirement:** The total amount of revenue required by a utility to recover its capital investments and associated income and property taxes (including the effect of deferred taxes), including a return on those investments and associated depreciation expenses. (Settlement § 2.9)

**CWIP:** Construction Work In Progress. (Settlement § 2.13)

**Cancelled CWIP:** The total Original Cost of CWIP associated with SONGS-related projects that began prior to October 31, 2014, but that will not enter service at any time after February 1, 2012. (Settlement § 2.13(a))

**Completed CWIP:** CWIP associated with SONGS-related projects that began prior to October 31, 2014, and will enter service at any point after February 1, 2012, including all CWIP that will enter service after October 31, 2014. (Settlement § 2.1(b))

**DA:** SCE's direct access customers.

**DOE:** United States Department of Energy.

**ERRA:** Energy Resource Recovery Account. (Settlement § 2.15)

**Financing Cost Savings:** The difference between the actual cost of financing the Regulatory Asset and the amount yielded by applying the Authorized Cost of Debt.

**Fuel Cancellation Costs:** The total recorded costs associated with cancelling SCE's contracts to purchase nuclear fuel that are not recoverable from the NDT. (Settlement § 2.17)



## Appendix 1: Glossary of Terms

**Incremental Inspection and Repair Costs:** Those costs recorded by SCE as incremental expenses associated with SCE's efforts to inspect and repair the damage at SONGS. (Settlement § 2.19)

**ISFSI:** The independent spent fuel storage installation designed and constructed for the interim storage of spent nuclear fuel.

**Mitsubishi:** Mitsubishi Heavy Industries, Ltd., and related entities such as Mitsubishi Nuclear Energy Systems and Mitsubishi Heavy Industries America Inc. (Settlement § 2.20)

**M&S Investment:** The total original cost of materials and supplies investments associated with SONGS. (Settlement § 2.21)

**M&S Net Proceeds:** The total proceeds of all sales of materials and supplies, net of costs incurred by SCE in order to sell such materials and supplies. (Settlement § 2.22)

**Net Book Value:** Original cost less the accumulated amortization and depreciation expenses, if any, associated with an investment. (Settlement § 2.24)

**NEIL:** Nuclear Energy Insurance Limited. (Settlement § 2.25)

**Non-O&M Expenses:** All SONGS-related expenses that are *not* O&M, Base Plant, or Nuclear Fuel Investment expenses. (Settlement § 2.27)

**NDT or Nuclear Decommissioning Trusts:** The trusts established by SCE and SDG&E and approved by the CPUC pursuant to the Nuclear Facilities Decommissioning Act of 1985, Cal. Pub. Util. Code Sec. 8321 et seq., for the purpose of covering costs associated with decommissioning SONGS. (Settlement § 2.29)

**Nuclear Fuel or Nuclear Fuel Investment:** The Net Book Value of all nuclear fuel (including in-core fuel and pre-core fuel), *plus* all Fuel Cancellation Costs. (Settlement § 2.30)

**NRC:** Nuclear Regulatory Commission. (Settlement § 2.31)

**O&M:** Operations and Maintenance. (Settlement § 2.32)

**PVRR or Present Value of Revenue Requirement:** The funds to be recovered in rates over time, expressed in constant dollars by application of a discount rate.

**Regulatory Asset:** The Base Plant, CWIP, M&S, and Nuclear Fuel to be recovered by SCE under the Amended Settlement Agreement.

**RSG:** Replacement steam generators designed and fabricated by Mitsubishi as part of the SGRP.

**SGIR:** SCE expenditures related to the SONGS steam generator tube failure and outage.

## Appendix 1: Glossary of Terms

**SGRP:** Steam Generator Replacement Project. (Settlement § 2.39)

**SONGS Litigation Costs:** All litigation costs recorded since January 31, 2012, including but not limited to fees paid to outside attorneys and experts, associated with pursuing and preparing to pursue SONGS Litigation Proceeds. (Settlement § 2.43)

**SONGS Litigation Recoveries:** Any amounts received (whether by settlement, judicial order, arbitration award, or any other recovery) by SCE and SDG&E from NEIL and/or Mitsubishi or their respective affiliates. (Settlement § 2.44)

**U2C17 RFO:** The refueling and maintenance outage for SONGS Unit 2 that was intended to last from January 10, 2012, until March 5, 2012. (Settlement § 2.48)

## **Appendix 2**

SOUTHERN CALIFORNIA EDISON  
COMPANY,

Plaintiff,

v.

UNITED STATES,

Defendant.

No. 11-870C  
(Judge Williams)

## SETTLEMENT AGREEMENT

### *I. Purpose And Recitals*

The purpose of this agreement is to settle upon the amount owed to Plaintiff on its claims pending before the trial or appellate court and establish an administrative process for the payment of future claims for costs paid through the term of the agreement. The agreement consists of this section and the following sections: II. Resolution Of Plaintiff's Claims; III. Allowable Costs To Be Claimed; IV. Future Final Allowable Cost Determinations; V. Procedures For Binding Arbitration; VI. Termination Of Settlement, Releases, And Reservation Of Rights; VII. Warranties And Representations; VIII. Payment Of Fees Pursuant To The Contract; IX. Acceptance By DOE Of Casks, Canisters, Or Other Equipment; and X. Additional Terms And Provisions. To obviate the need for any further litigation or judicial proceedings, including any further trial or adjudication of any issue of law or fact, and without constituting an admission of liability on the part of the United States, and for no purpose other than those stated, the parties stipulate and agree as follows:

A. Plaintiff for these purposes is Southern California Edison Company. (Unless the context requires otherwise, the singular shall include the plural, and vice versa.) With the

consent of the United States, this agreement shall inure to the benefit of, and be assignable to, successors or affiliates of Plaintiff, or other parties to whom the Standard Contracts (as identified below) are assigned.

B. Plaintiff is the Purchaser under a Standard Contract with the United States Department of Energy (“DOE”) for the acceptance of spent nuclear fuel (“SNF”) and high-level radioactive waste (“HLW”) under the Nuclear Waste Policy Act, the material terms of which are reproduced at 10 C.F.R. § 961.11, and which is numbered DE-CR01-83NE44418 (for these purposes, the “Contract”).

C. The Contract covers the San Onofre Nuclear Generating Station (for these purposes, the “Site”).

D. The Contract required DOE to commence acceptance of SNF/HLW “not later than January 31, 1998.” DOE has not commenced acceptance of SNF/HLW. Plaintiff has filed a lawsuit against the Government, alleging entitlement to recovery of damages because DOE has not commenced acceptance of SNF/HLW. That lawsuit is currently pending before the United States Court of Federal Claims, No. 11-870C (the “Lawsuit.”)

## ***II. Resolution Of Plaintiff's Claims***

Plaintiff has offered to settle the Lawsuit and to waive any claims for costs paid and injuries sustained through December 31, 2016, in exchange for the payment of \$162,355,298.00 for costs paid through December 31, 2013, and the payment of subsequent claims pursuant to the process set forth in section IV, below. Plaintiff's offer has been accepted by the authorized representative of the Attorney General. Each party will bear its own legal costs, attorney fees, and expenses.

### ***III. Allowable Costs To Be Claimed***

This section defines the costs that will be deemed allowable for purposes of annual claims submitted under this agreement for costs paid through the termination date of this agreement. Costs are allowable, and therefore recoverable, pursuant to this agreement to the extent, and only to the extent, that they are (1) reasonable; (2) allocable to a project traceable to DOE's delay; (3) within the categories of costs identified in section III.C below as allowable and are not designated as unallowable; and (4) determined by the Contracting Officer to be allowable under the review provisions set forth in section IV of this agreement.

#### ***A. Determining Reasonableness***

Costs will be deemed "reasonable" if, in their nature and amount, they do not exceed those that would be paid by a prudent person or entity in the conduct of Plaintiff's competitive business. What is "reasonable" depends upon a variety of considerations and circumstances, including whether a cost (a) is the type generally recognized as ordinary and necessary for the conduct of Plaintiff's business or the Contract performance, considering normal and reasonable lead times for the design, procurement and fabrication of SNF/HLW storage equipment, and facilities and ancillary activities related thereto; (b) is consistent with generally accepted sound business practices, arms-length bargaining, and Federal and state laws and regulations; and (c) is incurred in accordance with Plaintiff's established business practices.

#### ***B. Determining Allocability***

A cost is allocable to a project traceable to DOE's delay if it (a) is paid specifically for a project that was made necessary by DOE's delay in commencing SNF acceptance and that, but for DOE's delay, would not have been necessary; or (b) benefits both a delay-related project and other work, and can be distributed to them in reasonable proportion to the benefits

received. If Plaintiff incurs costs that are attributable to both the storage of Plaintiff's Allocations, as defined below, and to other work at the Site and can be distributed to the projects in reasonable proportion to the benefits received, Plaintiff may claim the portion of the costs distributed to managing and storing SNF as an allowable cost. If Plaintiff's claim includes costs that have been distributed to projects for the storage of Plaintiff's Allocations, Plaintiff must clearly indicate the distributed costs and clearly establish and explain the basis for the distribution in Plaintiff's claim; if Plaintiff fails to do so, the DOE Contracting Officer or his designee may determine that the claim is incomplete, pursuant to section IV.B below.

***C. Categories Of Costs Expressly Identified As Allowable And Unallowable***

***1. Definition And Use Of "Plaintiff's Allocations."***

a. For purposes of this agreement, "Plaintiff's Allocations" means the allocations of SNF set forth in Attachment 1. To determine Plaintiff's Allocations, DOE applied the rates set forth in Table 2.1 at page 7 of the 1987 Annual Capacity Report for the years 1998-2007 and set forth on page 61 of the Mission Plan Amendment, issued by the Office of Civilian Radioactive Waste Management, dated June 1987, for the years 2008-15 to DOE's 2004 Acceptance Priority Ranking. After exhausting the spent nuclear fuel inventories contained in the 2004 Acceptance Priority Ranking, DOE applied these rates to the spent nuclear fuel discharges obtained from the nuclear utilities that hold Standard Contracts and the Nuclear Regulatory Commission.

b. Plaintiff's Allocations shall not be reduced or modified for any reasons, including, but not limited to, for accommodation of acceptance of Greater-Than-Class-C radioactive waste or HLW, or deferral or delay of acceptance of Failed or Non-Standard Fuel.



c. For purposes of determining whether costs are allowable because they were paid to store Plaintiff's Allocations, Plaintiff may use its Allocations for any of Plaintiff's Contracts or Sites. However, Plaintiff must use the Allocations in a manner consistent with minimizing the total SNF storage costs that Plaintiff would have incurred at all of its sites had DOE taken delivery of SNF from Plaintiff in accordance with Plaintiff's Allocations and consistent with Plaintiff's documented business practices.

2. Categories Of Costs Expressly Designated As Allowable. The following categories of costs are allowable, provided that (1) the costs are directly related to the storage of Plaintiff's Allocations, as that term is defined above; (2) at the time of its submission of its annual claim pursuant to section IV, Plaintiff has paid for the item or service for which it seeks reimbursement pursuant to this agreement by cash, check, wire transfer, or other form of actual payment; and (3) the costs satisfy the reasonableness and allocability requirements identified above.

a. Additional Pool Storage - Costs to purchase, license, and install new, additional or replacement storage racks or to make available additional storage spaces to the extent, and only to the extent, necessary to provide additional capacity in the spent fuel pool at the Site;

b. Dry Storage Costs - Costs to purchase storage casks and canisters, including those canisters that may be licensed for transport, and transfer casks for the storage of SNF at the Independent Spent Fuel Storage Installation ("ISFSI"); costs to load SNF into and to transport canisters and casks for storage at the ISFSI; costs of ancillary equipment for casks and cask loading, including, but not limited to, lifting yokes, crawlers, tugs, dollies, and vacuum drying equipment; costs to conduct initial loading demonstrations required by the



Nuclear Regulatory Commission (“NRC”); costs of training and development of procedures; costs for cask loading campaign mobilization and demobilization; costs to study and to evaluate SNF storage options; costs for quality assurance inspections of cask vendors; costs for security improvements required by NRC for the ISFSI; costs of maintaining and operating the ISFSI; costs for security improvements or upgrades required to comply with Plaintiff’s security plan approved by the NRC; and costs to design, license and build the ISFSI pad, including costs of building the portion of the ISFSI pad that will be required for the storage of Plaintiff’s SNF in addition to Plaintiff’s Allocations, provided that Plaintiff can demonstrate that it was more cost effective to incur the costs to design, license and build the ISFSI pad during the claim period rather than after termination of the agreement. If Plaintiff previously constructed an ISFSI for reasons other than to store Plaintiff’s Allocations or needs to place, or places, items other than casks or canisters containing Plaintiff’s Allocations in dry storage, only the costs attributable to the portion of the ISFSI needed to store Plaintiff’s Allocations will be allowable.

c. Modifications Of The Existing Plant - Costs paid to modify cranes to the extent, and only to the extent, necessary to increase the rated lifting capacity of the crane(s) used in the loading of SNF from the fuel storage pool, provided that Plaintiff can establish that these modifications would not have been necessary to meet the requirements of NUREG-0612 or load SNF in casks or canisters provided by DOE had DOE begun performance in 1998; building modifications that Plaintiff can establish would not have been necessary to load SNF in casks or canisters provided by DOE (e.g., seismic restraints for fuel pool or upgrades to floor of cask loading area); and costs to improve the haul path from the fuel building to the ISFSI, to the extent that the haul path is different from the path that Plaintiff

would have used to deliver fuel to DOE. If Plaintiff incurs costs for site modifications or equipment purchases to store Plaintiff's Allocations that otherwise benefit the operation of the plant, including crane modifications for purposes other than loading storage canisters or casks, the cost reimbursed will be proportional to the benefit to the operation of the plant.

d. Property Taxes - Costs paid as a result of any increase in assessed property tax resulting from and traceable to projects, as identified in the preceding three paragraphs, that were undertaken to provide additional storage for Plaintiff's Allocations.

e. Labor And Overhead - The cost of labor charged directly by Plaintiff's employees to any project that is otherwise allowable shall be considered allowable, provided that the hours expended on such project are charged in accordance with Plaintiff's standard time recordation system and are identified at the individual employee level. In addition, the following types of overhead charges will be deemed allowable provided that the charges are calculated in accordance with Plaintiff's established accounting practice and policy: (a) payroll overheads or "burdens" associated with labor hours charged to allowable projects; and (b) non-payroll overheads allocated to allowable projects claimed up to a maximum of five percent of the portion of Plaintiff's claim which is otherwise allowable and to which such non-payroll overheads are allocated.

3. Categories Of Costs Expressly Designated As Unallowable. Any category of cost not expressly identified in section III.C.2 above is unallowable. Unallowable costs include, but are not limited to, the following:

a. Any cost that, although listed in the categories of allowable costs, resulted from Plaintiff's actions, inactions, errors, or omissions rather than as a direct result of DOE's delay.

b. Costs in claims predicated upon adjustments to Plaintiff's Allocations based upon the plus-or-minus-20 percent quantity adjustment provision in Art. V.B.2 of the Contract, the exchanges provision in Art. V.E of the Contract, or the priority for shutdown reactors provision in Art. VI.B.1.b of the Contract.

c. Monies paid for the development of off-site storage initiatives including, but not limited to, Private Fuel Storage, LLC.

d. Interest-related claims, including, but not limited to, cost of capital claims, Allowance for Funds Used During Construction claims, time-value-of-money claims, and claims to recover interest on borrowings.

e. Costs paid as the result of requirements mandated by a legislature or governmental agency as a condition to approval of projects deemed to be allowable costs or otherwise enacted by a legislature or promulgated by an agency as a consequence of DOE's delay.

f. Overhead costs other than those expressly described as allowable in section III.C.2.e.

g. Costs paid for spent fuel characterization.

h. Claims for generic NRC fees paid pursuant to 10 C.F.R. Part 171.

i. Costs paid for the characterization, storage, disposal, or management of "Greater-Than-Class-C" radioactive waste generated at Plaintiff's Site.

j. Costs paid for the maintenance or repair of cranes or other plant equipment necessary for the operation of the plant or for the shipment of fuel off-site.

k. Consequential damages, penalties, fines, delay charges, or any other ancillary costs; and

l. Costs paid by Plaintiff for the presentation of claims to the Contracting Officer pursuant to this agreement.

#### ***IV. Future Final Allowable Cost Determinations***

This section describes the administrative claims process for the annual determination of allowable costs owed to Plaintiff as the result of DOE's delay. If any of the deadlines set forth in this section fall on a Saturday, Sunday or Federal holiday, the deadline shall be the next business day. All deadlines set forth below may be extended by written agreement of the parties, as applicable. Notices and other submissions described in this section shall be provided by overnight courier unless otherwise indicated.

##### ***A. Submission Of Claims For Allowable Costs***

1. Plaintiff shall submit claims annually for the payment of allowable costs to the DOE Contracting Officer. Plaintiff shall submit its first claim after execution of this agreement no later than September 30, 2016. Plaintiff's first claim after execution of this agreement will be for Plaintiff's costs paid between January 1, 2014 and December 31, 2015. Plaintiff must submit subsequent claims by that same date (September 30) each year. In each annual claim, Plaintiff either will request payment for allowable costs or will indicate that the request for payment is being deferred. Plaintiff may defer the submission of a claim for up to three years if the amount of allowable costs to be claimed is less than \$500,000. When a deferred claim is submitted, Plaintiff must submit it no later than September 30 of the year in which it is submitted. Absent deferral or a mutually agreed upon extension of time, if Plaintiff

fails to submit a timely claim, Plaintiff foregoes the opportunity to recover costs for that claim period.

2. Plaintiff shall submit claims in writing to the DOE Contracting Officer for the Contract. In the claim, Plaintiff shall include claimed allowable costs that it has paid since the last date of the costs claimed in the prior submission. The DOE Contracting Officer will not consider claims for costs paid during the time period covered by a prior submission. Plaintiff will include sufficient supporting documentation to allow the DOE Contracting Officer to verify that the costs have been paid and properly recorded in Plaintiff's accounting system. An authorized representative of Plaintiff must sign the claim and certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of Plaintiff's knowledge and belief, and that the amount requested accurately reflects the allowable and reasonable costs for which Plaintiff believes the Government is liable under this agreement.

***B. DOE Determination Of Allowable Costs***

1. Initial Sufficiency Review. Assuming that Plaintiff has submitted an annual or deferred claim by September 30 of any calendar year, the DOE Contracting Officer or his designee will have until October 14, and in no event less than 14 calendar days after the date that DOE receives Plaintiff's claim, to review the claim and to determine whether it is sufficiently complete to allow DOE to proceed with its review. The DOE Contracting Officer or his designee will notify Plaintiff by electronic mail and either (a) state that the claim appears to be complete or (b) state that the claim is incomplete and identify the areas of the claim that are deficient. If the DOE Contracting Officer determines that the claim is incomplete, DOE's notice of deficiencies will include a new date by which Plaintiff must re-submit its claim. The



new date will be for only the claim period at issue and will not change the annual date for the submission of Plaintiff's claim set forth in section IV.A.1. above.

2. 90-Day DOE Review. Within 90 calendar days of the date that the DOE Contracting Officer or his designee notifies Plaintiff that its claim appears to be complete, DOE shall issue and provide to Plaintiff a determination identifying those claimed costs deemed to be allowable ("DOE Determination"). For Plaintiff's first claim for costs, the DOE Contracting Officer shall have 120 calendar days to issue the DOE Determination. Should the DOE Contracting Officer or his designee find that any claimed costs are not allowable or reasonable, the DOE Contracting Officer or his designee shall identify those claimed costs and state the reason(s) for that finding in the DOE Determination.

3. Should the DOE Contracting Officer or his designee conclude, at any time during DOE's review of the claim, that Plaintiff has not supplied sufficient supporting documentation or information to allow reasonable verification of the paid costs, the DOE Contracting Officer or his designee shall request from Plaintiff the necessary additional documentation or information needed. Plaintiff shall supply the additional documentation or information within 10 calendar days of DOE's request. If Plaintiff fails to supply the requested documentation or information within 10 days, the DOE Contracting Officer or his designee may adjust the schedule for the issuance of the DOE Determination as the Contracting Officer determines is necessary to accommodate Plaintiff's delay in providing the information or may find in the DOE Determination that the costs for which the additional information or documentation are sought are not allowable.

4. If the DOE Contracting Officer fails to provide Plaintiff with the DOE Determination within the 90-day period, absent written agreement to extend the date,

Plaintiff's claim shall be deemed denied in its entirety on the date on which DOE should have provided the DOE Determination, DOE's Determination shall be deemed to be zero, and Plaintiff may pursue binding arbitration, as set forth in section V. No other judicial, administrative, or other remedies may be pursued, other than settlement.

***C. Plaintiff's Response To DOE Determination***

Within 30 days of the date Plaintiff receives the DOE Determination, Plaintiff shall provide to the DOE Contracting Officer and the Director, National Courts Section, Commercial Litigation Branch, Department of Justice ("DOJ"), written notice that Plaintiff either (i) accepts the DOE Determination; (ii) believes that the DOE Contracting Officer has committed an error that warrants further discussion; or (iii) intends to pursue binding arbitration with respect to its claim. In the event that Plaintiff elects to engage in further discussion with DOE, DOE shall provide to Plaintiff within 30 days of receipt of notice of such election a supplemental determination (even if its determination does not change as a result of discussions with Plaintiff), which shall become the DOE Determination for purposes of this agreement, and Plaintiff shall be afforded an additional 30 days to make the election described above.

1. Acceptance By Plaintiff of DOE's Determination

a. If Plaintiff accepts the DOE Determination, DOJ shall, within 30 days of the receipt of written notice of such acceptance, obtain from the Attorney General's authorized representative either the necessary approval to pay Plaintiff the amount set forth in the DOE Determination or a determination that the DOE Determination has not been accepted.

b. If the Attorney General's authorized representative approves payment to Plaintiff of the amount set forth in the accepted DOE Determination, DOJ shall

provide Plaintiff and DOE with written notice within the 30-day period regarding the determination of the Attorney General's authorized representative. In such a circumstance, the DOE Determination shall become the Final Allowable Cost Determination and shall not be subject to any further challenge, litigation, or dispute resolution process, including judicial review. The Final Allowable Cost Determination shall be deemed to be a "compromise settlement," made by the Attorney General's authorized representative, pursuant to 31 U.S.C. § 1304, of claims referred to the Attorney General for defense of imminent litigation or suits against the United States, or against its agencies or officials upon obligations or liabilities of the United States, for purposes of 28 U.S.C. § 2414. Plaintiff may immediately present to the Government a Final Allowable Cost Determination for payment. The authorized representative of the Attorney General shall execute promptly all necessary approvals to effectuate payment of the Final Allowable Cost Determination.

c. If the Attorney General's authorized representative does not approve the DOE Determination, DOJ will so notify Plaintiff within the 30-day period and Plaintiff may either (a) treat any alternate amount approved by Attorney General's authorized representative as the Final Allowable Cost Determination, as set forth in section IV.C.1.b, or (b) elect to pursue binding arbitration as set forth in section V. No other judicial, administrative, or other remedies may be pursued, other than settlement.

d. If, within the 30 days following receipt of Plaintiff's acceptance of the DOE's Determination, DOJ fails to advise Plaintiff that the Attorney General's authorized representative has accepted or rejected the DOE Determination, and the parties do not agree in writing to extend this deadline, DOE's Determination shall be deemed to be zero,



and Plaintiff may pursue binding arbitration, as set forth in section V. No other judicial, administrative, or other remedies may be pursued, other than settlement.

2. Rejection By Plaintiff of DOE's Determination

If Plaintiff rejects the DOE Determination, Plaintiff may pursue binding arbitration, as set forth in section V. No other judicial, administrative, or other remedies may be pursued, other than settlement.

***V. Procedures For Binding Arbitration***

***A. Commencement Of Arbitration***

To pursue arbitration under this agreement, Plaintiff shall, within 30 days of the action identified in the previous sections that entitles Plaintiff to pursue arbitration, send to DOJ and the DOE Contracting Officer a notice, signed by an authorized representative of Plaintiff, reflecting its intent to proceed with arbitration and certifying that the claim it intends to submit to arbitration is made in good faith, that the supporting data are accurate and complete to the best of Plaintiff's knowledge and belief, and that the amount requested accurately reflects the allowable and reasonable costs for which Plaintiff believes the Government is liable under this agreement. The notice must also identify the categories and amounts of the costs that Plaintiff seeks to recover through arbitration, regardless of whether these costs were determined to be allowable by the DOE Contracting Officer as part of the DOE Determination. The amount that Plaintiff seeks to recover through arbitration may not exceed the amount of its claim certified pursuant to section IV.A.2 of this agreement. If these conditions are satisfied, the Attorney General's authorized representative shall be deemed to have authorized the submission of the dispute to binding arbitration, subject to the following limitation. The parties agree that the arbitrator's authority in any arbitration commenced pursuant to this

agreement is limited to an award not to exceed the amount certified for arbitration by Plaintiff.

***B. Selection Of Neutral***

The parties shall jointly select an independent neutral. If the parties cannot agree on an independent neutral within 30 days of the notice provided for in section V.A above, the parties will submit a request to the Civilian Board of Contract Appeals for appointment of a member of that Board to act as an independent neutral.

***C. Rules Governing Arbitration***

The independent neutral shall review only the written submissions of the parties and shall not consider any evidence not previously submitted to DOE unless the independent neutral determines that more information is needed. Other rules governing the arbitration shall be decided upon by the parties in consultation with the independent neutral. The independent neutral shall render a written opinion within 30 days of receipt of the submissions of the parties, or within a time period agreed upon by the parties and the independent neutral. In the opinion, the neutral shall address the disagreement and render a finding of an amount, if any, that should be paid to Plaintiff (hereinafter, the "Neutral's Finding"). This amount may be any amount between zero and the amount of Plaintiff's certified claim.

***D. Final Allowable Cost Determination***

Subject to the limitation set forth in the last sentence of section V.A above, the Final Allowable Cost Determination shall be determined by reference to the Neutral's Finding; provided, however, that (1) if the amount set forth in the Neutral's Finding is within five percent of the DOE Determination, the Final Allowable Cost Determination shall be either the Neutral's Finding or the amount of the DOE Determination, whichever is lower; (2) if the

amount set forth in the Neutral's Finding is within five percent of the amount certified for arbitration by Plaintiff, the Final Allowable Cost Determination shall be the amount certified for arbitration by Plaintiff; and (3) the arbitrator shall not have authority to award more than the amount certified for arbitration by Plaintiff. If the amount certified for arbitration by Plaintiff does not exceed the DOE Determination by more than five percent, the amount set forth in the Neutral's Finding shall be the Final Allowable Cost Determination.

***E. Finality***

The Final Allowable Cost Determination reached through binding arbitration shall not be subject to any further dispute resolution process, including judicial review. The Final Allowable Cost Determination shall be deemed to be a compromise settlement, made by the Attorney General's authorized representative, of claims referred to the Attorney General for defense of imminent litigation or suits against the United States, or against its agencies or officials upon obligations or liabilities of the United States, for purposes of 28 U.S.C. § 2414. The parties intend that such a Final Allowable Cost Determination shall constitute a "compromise settlement" under 31 U.S.C. § 1304. Plaintiff may immediately present to the Government a Final Allowable Cost Determination for payment. The authorized representative of the Attorney General shall execute promptly all necessary approvals to effectuate such payment.

***VI. Termination Of Settlement, Releases, And Reservation Of Rights***

***A. Termination Date***

Plaintiff may submit claims for costs paid up to and including December 31, 2016. With the payment of costs paid as of December 31, 2016, the parties' obligations under this

agreement shall terminate and be discharged. The parties may extend the termination date for this agreement by mutual written agreement.

***B. Releases***

Upon satisfaction of the terms set forth in this agreement, including but not limited to payments of the amounts determined pursuant to sections II and IV, Plaintiff releases, waives, and abandons all claims against the United States, its political subdivisions, its officers, agents, and employees that arise out of or relate to DOE's delay in performance of its obligations under the Contract, with respect to costs paid and injuries sustained prior to the termination of this agreement, regardless of whether such claims were included in the Lawsuit or subsequent claims submitted pursuant to this agreement, including but not limited to any claims for legal costs, expenses, attorney fees, compensatory damages, and exemplary damages. This release is not limited to claims for breach of contract and includes all claims arising from DOE's delay, including claims for diminution-in-value and takings.

***C. Reservation Of Rights***

1. Plaintiff and the United States expressly reserve any and all rights related to claims, costs paid, obligations, rights and duties under the Contract after the termination date of this agreement and, after the expiration of this agreement, may raise or pursue any defenses, claims for additional partial breach, total breach, or rescission of the Contract, or any other right or remedies afforded at law. However, in the adjudication of claims or defenses after the termination date, including those for total breach or rescission, the parties shall not seek to adjust the amounts paid pursuant to this agreement or obtain a refund of the fees paid by Plaintiff pursuant to Art. VIII of the Contract prior to the termination date of this agreement.

2. To defend against any such future claims, the United States may rely upon any and all defenses, including affirmative defenses. Additionally, the United States further reserves the right to deduct from future claims any costs that Plaintiff would have paid after the termination date of this agreement, had DOE timely commenced acceptance of SNF in accordance with the Contract.

3. Plaintiff and the United States also reserve the right to take discovery regarding any matter that is relevant to any party's claim or defense that arises out of, or relates to, costs paid by Plaintiff after the termination date of this agreement and arises out of or relates to DOE's delay in performance of its obligations under the Contract. Such discovery also may include discovery into matters that arise out of, or relate to, Plaintiff's claims for costs paid prior to the termination date of this agreement, to the extent that those prior claims relate to claims brought after the termination date.

4. Plaintiff shall retain the right to seek reimbursement for the costs, if any, of storing Plaintiff's Allocations that are paid after the expiration of the term of this agreement.

#### ***VII. Warranties And Representations***

Plaintiff warrants and represents that Plaintiff is the holder of the Contracts, and that no other actions or suits by Plaintiff are pending with respect to the claims advanced in the Lawsuit, nor will such actions or suits be filed by Plaintiff in any court, administrative agency, or legislative body, except as contemplated by this agreement. Plaintiff also warrants and represents that it owns all claims arising under the Contracts attributable to DOE's delays. Plaintiff agrees to indemnify and to reimburse the Government for any monies that the Government may be required to pay to other parties for claims arising under or related to the Contracts attributable to DOE's delays. Plaintiff further warrants and represents that it has



made no assignment or transfer of any of the claims advanced in the Lawsuit, although Plaintiff may be obligated by certain contractual arrangements or otherwise to distribute portions of recoveries received by Plaintiff to other parties. Any such distribution shall be the sole obligation of Plaintiff. Should there be now or in the future any violation by Plaintiff of these warranties and representations, any amount paid by the United States to Plaintiff pursuant to this agreement shall be refunded promptly by Plaintiff to the United States, together with interest thereon at the rates provided in 41 U.S.C. § 611, computed from the date the United States makes payment.

***VIII. Payment Of Fees Pursuant To The Contract***

A. Quarterly fees. During the period covered by this agreement, Plaintiff will continue to pay the quarterly fees as required by the Standard Contract, Art. VIII. If Plaintiff fails to pay the required fees during a period covered by a claim submitted pursuant to this agreement, the United States will have no obligation to evaluate or to pay Plaintiff's claim for costs paid during that same period.

***IX. Acceptance By DOE Of Casks, Canisters Or Other Equipment***

DOE shall, in its sole discretion, have the right to take possession of the storage and/or transportation casks or canisters and any ancillary, portable equipment utilized in cask loading or operation of storage facility for which the United States has compensated Plaintiff pursuant to this agreement "as is, where is" when no longer needed for use by Plaintiff.

A. Equipment Other Than Casks And Canisters. Six months prior to Plaintiff disposing of equipment other than casks and canisters, Plaintiff shall notify the DOE Contracting Officer of the planned disposal to allow DOE the opportunity to exercise this option. DOE will notify Plaintiff of its election within 60 days of Plaintiff's notice. Should

DOE elect not to exercise this option, Plaintiff will be responsible for the disposition of such equipment, but the costs of such disposition shall be allowable and, if otherwise reasonable, payable to Plaintiff pursuant to this agreement.

B. Casks And Canisters. Five years prior to the projected acceptance of SNF stored by Plaintiff in any cask or canister, DOE shall inform Plaintiff of its election regarding the acceptance of those casks and canisters. The five-year requirement for notice shall not be applicable if the schedule for DOE's performance does not allow for that much notice, but in no event shall DOE provide less than six months notice. If DOE elects not to take possession of the casks or canisters, Plaintiff will be responsible for the disposition of the casks and/or canisters, but the costs of such disposition shall be allowable and, if otherwise reasonable, payable to Plaintiff pursuant to this agreement.

**X. *Additional Terms And Provisions***

A. Upon execution of this agreement, Plaintiff agrees to join with the United States in stipulating to dismiss the Lawsuit with prejudice, subject to the terms of this agreement.

B. This agreement is for the purpose of settling the Lawsuit and Plaintiff's claims for costs paid or injuries sustained through the termination date of this agreement and for no other purpose. Accordingly, this agreement shall not bind the parties, nor shall it be cited or otherwise referred to, in any proceedings, whether judicial or administrative in nature, in which the parties or counsel for the parties have or may acquire an interest, except as is necessary to effect the terms of the agreement or to comply with regulatory obligations.

C. Plaintiff's counsel represents that he has been and is authorized to enter this agreement on behalf of Plaintiff.

D. Any provision of this agreement that is held, after the date of the execution of this agreement, to be illegal, invalid, or unenforceable by a court or agency of competent jurisdiction under present or future laws that apply to this agreement shall be fully severable. In place of any severed provision, the parties may agree to substitute a legal, valid and enforceable provision that is as similar as possible to the severed provision.

E. This document constitutes a complete integration of the agreement between the parties and supercedes any and all prior oral or written representations, understandings, or agreements among or between them.

F. This agreement is intended to benefit only the parties, their successors, and their assignees. It is not intended to benefit, directly or indirectly, any other individual, group of individuals, organization, or entity.

G. This agreement is in no way related to or concerned with income or other taxes for which Plaintiff is now liable or may become liable in the future as a result of this agreement.

H. No provision of this agreement shall excuse Plaintiff from its obligation to make reasonable efforts to mitigate the costs for which it seeks reimbursement pursuant to this agreement.



AGREED TO:

FOR THE GOVERNMENT:



ROBERT E. KIRSCHMAN, JR.  
Director  
Commercial Litigation Branch,  
Civil Division  
U.S. Department of Justice  
P.O.Box 480  
Ben Franklin Station  
Washington, D.C. 20530

4-18-16  
Date

AUTHORIZED REPRESENTATIVE OF  
THE ATTORNEY GENERAL

FOR THE PLAINTIFF:



BRAD FAGG  
MORGAN LEWIS & BOCKIUS LLP  
1111 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

4/14/16  
Date

ATTORNEY AND AUTHORIZED  
REPRESENTATIVE OF SOUTHERN CALIFORNIA EDISON COMPANY

Attachment 1

**Southern California Edison - Allocations 1998-2021**

**Unit(s): San Onofre 1, 2, & 3**

Year	MTHM
Cumulative 2014	901.2
2015	80.6
2016	83.6
2017	45.5
2018	131.4
2019	-
2020	87.4
2021	92.7
<b>Total</b>	<b>1,422.4</b>

Allocation years 1998-2021 are based on actual discharge information from the GC-859 data collection with data through 6/30/13 for SCE. Allocation years 1998-2017 for the industry are based on the RW-859 data as of 12/31/2002 and allocation years 2018-2021 for the industry are based on GC-859 data for 2003 – 6/30/2013.

The parties agree that the above allocations do not fully cover the cask canister and overpack (MPC and CEC) costs under the Holtec contract, but, rather, cover approximately 58% of such expenditures that have occurred and which are expected prior to the end of 2016, and will therefore result in pro rata recoveries of those costs. The parties further agree that the resulting deductions in paid MPC and CEC costs under the Holtec contract due to the available allocations for the period January 1, 2014 through December 31, 2016 shall be \$24 million or 42% of all MPC and CEC progress payments paid under the Holtec Contract through 2016, whichever is greater. This pro rata recovery (58/42 split) of all MPC and CEC costs paid under the Holtec contract through December 31, 2016 resolves the recoverability of paid MPC and CEC costs through the termination date of this agreement.

**Appendix 3**  
Is Being Filed in the Form of Archival Grade DVD